

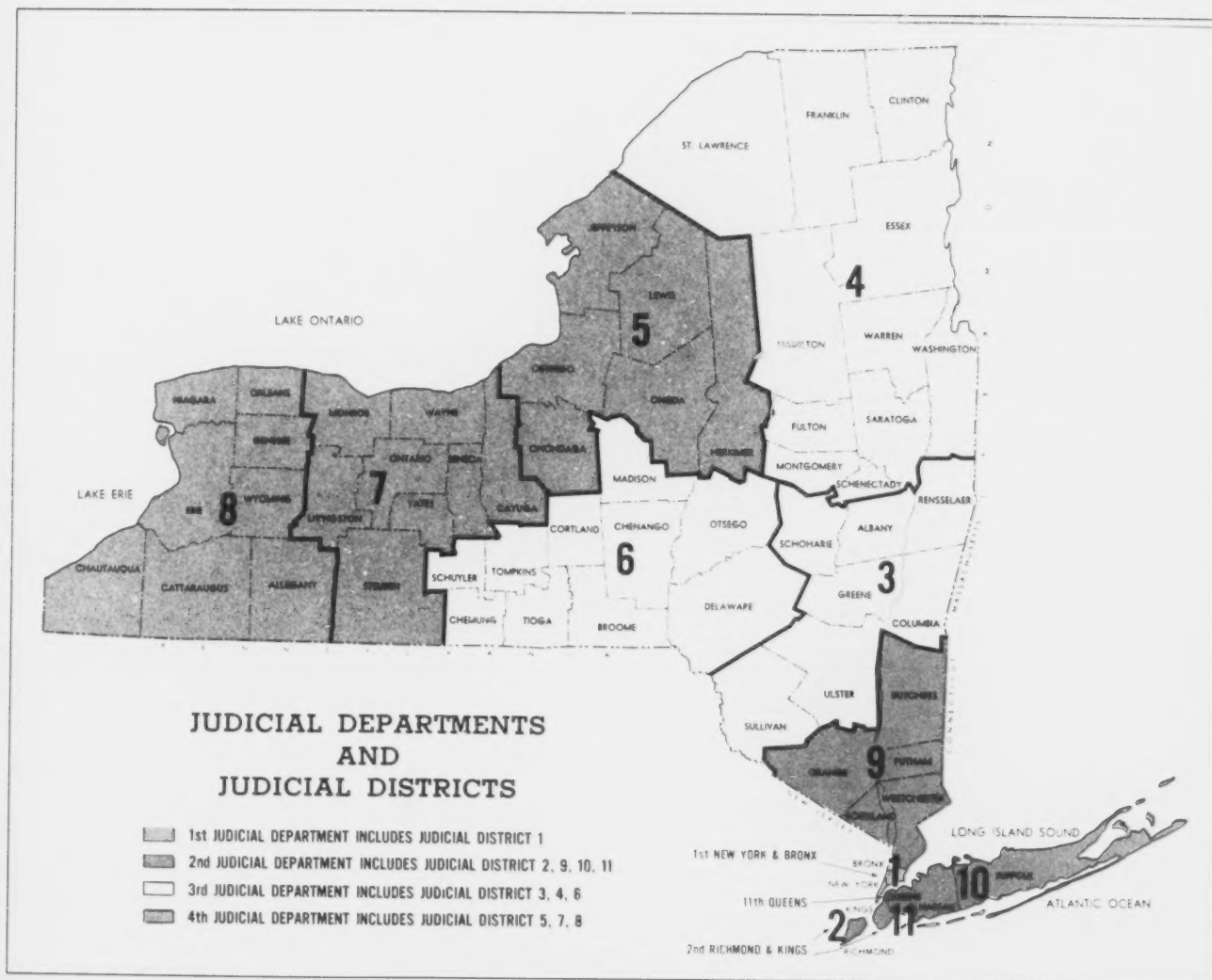
STATE OF NEW YORK



Fifth Annual Report of The Chief Administrator of the Courts

1983

STATE OF NEW YORK
OFFICE OF
COURT ADMINISTRATION



STATE OF NEW YORK

**Report
of
The Chief Administrator of the Courts**

**For the Calendar Year
January 1, 1982 — December 31, 1982**

Court of Appeals

Lawrence H. Cooke, *Chief Judge*

Matthew J. Jasen
Domenick L. Gabrielli
Hugh R. Jones

Sol Wachtler
Jacob D. Fuchsberg
Bernard S. Meyer

Chief Administrative Judge of the Courts

Herbert B. Evans

Administrative Board of the Courts

Lawrence H. Cooke, *Chairman*

Francis T. Murphy, Jr.
Milton Mollen

A. Franklin Mahoney
Michael F. Dillon

Letter of Transmittal

To:

THE HONORABLE MARIO M. CUOMO, Governor of the State of New York,
and
The Legislature of the State of New York:

Pursuant to Section 212 (j) of the Judiciary Law, I submit this annual report on the activities and state of the unified court system in 1982.

Herbert B. Evans
*Chief Administrative Judge
of the Courts*

March 15, 1983

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ADMINISTRATIVE BOARD OF THE COURTS

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Michael F. Dillon

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Preface

This is the Fifth Annual Report of the Chief Administrator of the Courts. It is submitted pursuant to section 212(j) of the Judiciary Law and covers the period from January 1, 1982 through December 31, 1982.

This report is the fifth in a series that succeeded the annual reports of the Administrative Board of the Judicial Conference, the Judicial Conference, and the Office of Court Administration. The latter, in turn, had succeeded the annual reports of the Judicial Council.

The report consists of four chapters. Chapter 1 describes the objectives, the structure, the administration and the financing of the courts in New York State. Chapter 2 presents the caseload activity report for court operations in calendar year 1982. Chapter 3 reports on education and training programs conducted, coordinated or assisted by the Office of Court Administration in 1982.

Chapter 4 summarizes (a) the legislation sponsored by the Office of Court Administration at the 1982 session of the Legislature and (b) rules revised or added during that year. It includes the *1983 Report of the Advisory Committee on Civil Practice to the Chief Administrator of the Courts of the State of New York*, the *1983 Report of the Advisory Committee on Criminal Law and Procedure to the Chief Administrator of the Courts of the State of New York*, the *1983 Report of the Family Court Advisory and Rules Committee to the Chief Administrator of the Courts of the State of New York*.

The Appendices consist of three sections: 1) the *Report of the Committee to Utilize the Services of Retired Judges*; 2) Other Programs (Retainer and Closing Statements, Statements of Approval of Compensation, Attorney Registration, and Adoption Affidavits); 3) Family Court Statistics.

Acknowledgment

The Chief Administrator of the Courts gratefully acknowledges the assistance and cooperation extended to him and to the Office of Court Administration during the past year by the Governor and his staff, members of the Legislature, members of the Judiciary, court personnel, bar associations, and individual lawyers and laypersons.

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The Courts

The *Judiciary* is one of the three branches of New York State Government. The powers and the structure of the New York State Judiciary are embodied in Article VI of the State Constitution. Article VI was approved by the voters in the 1961 election and became operative September 1, 1962, effecting the first court reorganization in New York since 1894. Article VI provides for a "unified court system for the state", specifies the organization and the jurisdiction of the courts in the state, and establishes the method of selection and removal of judges and justices.

Article VI also provides for the administrative supervision of the courts. Since April 1, 1978, under a court reform constitutional amendment approved by the people in November 1977, the responsibility and the authority for that function have been vested in the Chief Judge of the Court of Appeals, who is the Chief Judge of the State.

The Judiciary (1) provides a forum for the peaceful, fair and prompt resolution of (a) civil claims and family disputes, (b) criminal charges and charges of juvenile delinquency and (c) disputes between citizens and their government and challenges to governmental actions; (2) determines the legality of wills, adoptions, uncontested divorces and other undisputed matters submitted to the courts for review and approval; (3) provides legal protection for children, mentally ill persons and others entitled by law to the special protection of the court; and (4) regulates the admission of lawyers to the Bar and their conduct and discipline.

1.1 Court Structure

In New York State the courts of original jurisdiction, or trial courts, hear a case in the first instance, and the appellate courts hear appeals from the decisions of other tribunals.

The *appellate courts* are the Court of Appeals, the Appellate Divisions and the Appellate Terms of the Supreme Court, and the County Courts acting as appellate courts in the Third and Fourth Judicial Departments. The *trial courts* of superior jurisdiction are the Supreme Court, the Court of Claims, the Family Court, the Surrogates' Courts and, outside New York City, the County Courts. The trial courts of lesser jurisdiction are the Criminal Court and the Civil Court of the City of New York and, outside New York City, City Courts, District Courts and Town and Village Justice Courts.

The appellate structure of these courts is shown in Figures 1-a and 1-b.

The *Court of Appeals* is the highest court of the state. It consists of the Chief Judge and six Associate Judges. They are appointed by the Governor for 14-year terms, with the advice and consent of the Senate, from among persons found to be well-qualified by the Commission on Judicial Nomination. Five members of the Court constitute a quorum, and the concurrence of four members is required for a decision.

The jurisdiction of the Court is limited by Section 3 of Article VI of the Constitution to the review of questions of law, except in a criminal case in which the judgment is of death or a case in which the Appellate Division, in reversing or modifying a final or interlocutory judgment or order, finds new facts and a final judgment or order is entered pursuant to that finding. An appeal may be taken directly from the court of original jurisdiction to the Court of Appeals from a final judgment or order in an action or proceeding in which the only question is the constitutionality of a state or Federal statute. In other matters, the Constitution provides that certain types of cases can be taken to the Court of Appeals as a matter of right, while in still other cases an appeal to the Court of Appeals may be taken only with the leave of a justice of the Appellate Division or a judge of the Court of Appeals or upon the certification of the Appellate Division or the Court of Appeals.

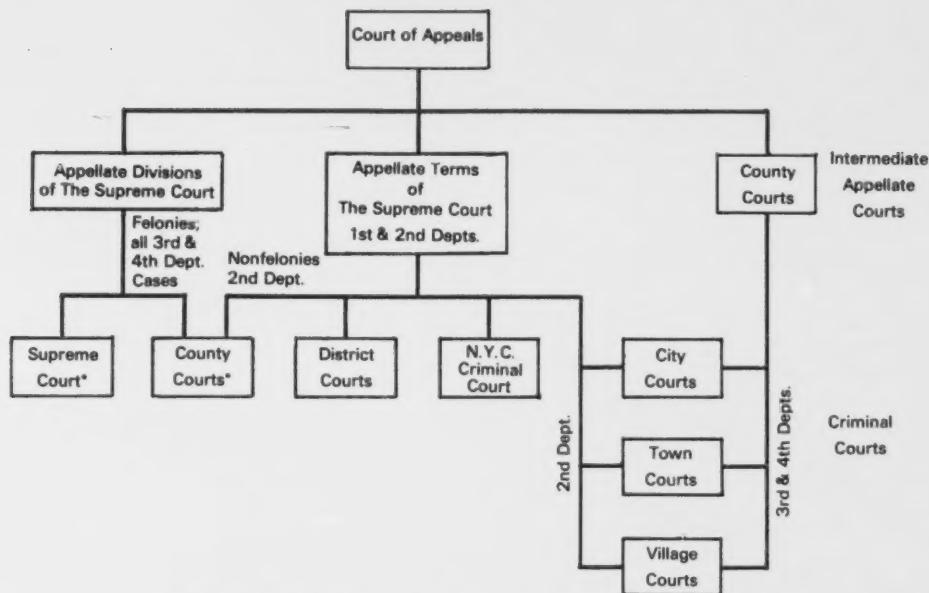
The Court also hears appeals from determinations of the State Commission on Judicial Conduct.

The *Appellate Divisions of the Supreme Court* are established in each of the state's four judicial departments (see the map at the beginning of this chapter). Their responsibilities include:

- Resolving appeals from judgments or orders of the courts of original jurisdiction in civil and criminal cases and reviewing civil appeals taken from the Appellate Terms.
- Conducting proceedings to admit, suspend, or disbar lawyers.

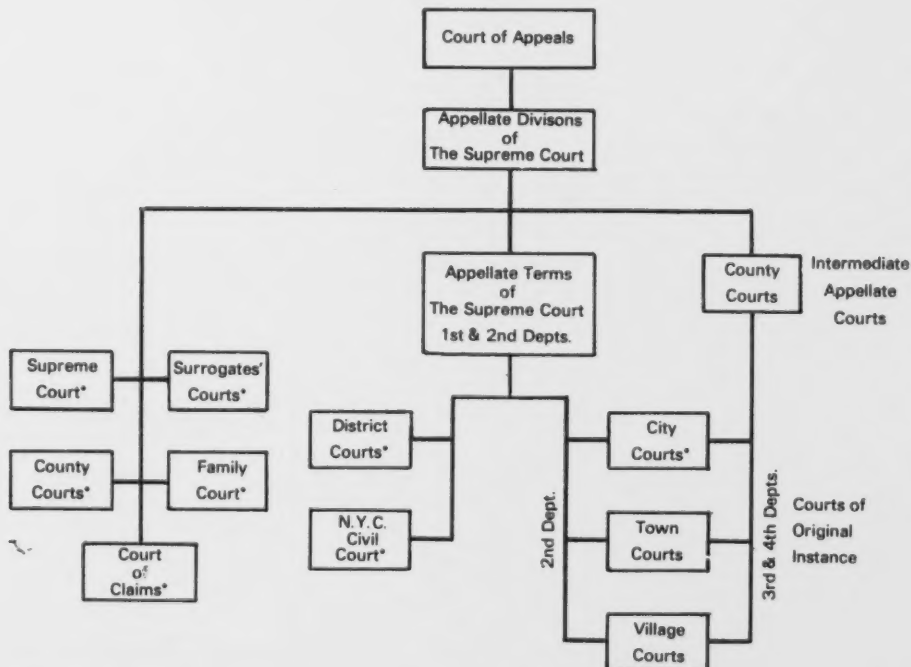
Each Appellate Division has jurisdiction over appeals from judgments and from final and some intermediate orders rendered in county-level courts and original jurisdiction over selected proceedings. Where established by the Appellate Division, *Appellate Terms* exercise jurisdiction over civil and criminal appeals from various local courts and certain criminal appeals from the County Courts in the Second Judicial Department.

Figure 1-a
NEW YORK STATE JUDICIAL SYSTEM
Criminal Appeals Structure



*Appeals involving death sentences must be taken directly to the Court of Appeals.

Figure 1-b
NEW YORK STATE JUDICIAL SYSTEM
Civil Appeals Structure



*Appeals from judgments of courts of record of original instance that finally determine actions where the only question involved is the validity of a statutory provision under the New York State or United States Constitution may be taken directly to the Court of Appeals. Only some of the City Courts are courts of record.

As prescribed by Section 4, Article VI of the Constitution, justices of the Supreme Court are designated to the Appellate Divisions by the Governor. The Governor designates the Presiding Justice of each Appellate Division, who serves for the length of his or her term of office as a justice of the Supreme Court. Associate justices are designated for five-year terms or for the remainder of their terms of office, whichever period is shorter. Section 212 of the Judiciary Law provides that justices of the Appellate Terms shall be designated by the Chief Administrator of the Courts with the approval of the Presiding Justices.

The *Supreme Court* has unlimited, original jurisdiction, but it generally hears cases outside the jurisdiction of other courts, such as:

- Civil matters beyond the financial limits of the lower courts' jurisdiction;
- Divorce, separation, and annulment proceedings;
- Equity suits, such as mortgage foreclosures and injunctions; and
- Criminal prosecutions of felonies and indictable misdemeanors in New York City.

Supreme Court justices are elected by judicial district for 14-year terms.

The *County Court* is established in each county outside New York City. It is authorized to handle criminal prosecution of offenses committed within the county, although in practice, most minor offenses are handled by lower courts. The County Court also has limited jurisdiction in civil cases generally involving amounts up to \$25,000.

County Court judges are elected in each county for terms of 10 years.

The *Surrogate's Court* is established in every county and hears cases involving the affairs of decedents, including the probate of wills and the administration of estates, and adoptions.

Surrogates are elected for terms of 10 years in each county outside New York City and for terms of 14 years in each county in New York City.

The *Family Court* is established in each county and the City of New York to hear matters involving children and families. The principal types of cases it hears include:

- Support of dependent relatives;
- Juvenile delinquency;
- Child protection;
- Persons in need of supervision;
- Review and approval of foster-care placements;
- Paternity determinations;
- Family offenses; and

— Adoptions (concurrent jurisdiction with Surrogate's Court).

Family Court judges are elected for 10-year terms in each county outside New York City and are appointed by the Mayor for 10-year terms in New York City.

The *New York City Civil Court* tries civil cases involving amounts up to \$25,000. It includes a Small Claims Part for informal disposition of matters not exceeding \$1,500 and a Housing Part for housing-code violations. New York City Civil Court judges are elected for 10-year terms. In addition to Civil Court judges, special Housing judges are appointed for 5-year terms to sit in Housing Parts. They are not, however, constitutional judges. The appointments are made by the Administrative Judge of the Civil Court.

The *New York City Criminal Court* conducts trials of misdemeanors and violations. Criminal Court judges also act as arraigning magistrates for all criminal offenses. New York City Criminal Court judges are appointed by the Mayor for 10-year terms.

There are four kinds of courts of lesser jurisdiction outside New York City: *District, City, Town and Village Courts*. These four courts handle minor civil and criminal matters. The methods of selection and the terms of office of judges of these courts vary throughout the state.

The *Court of Claims* is a special trial court that hears and determines claims against the State of New York. Court of Claims judges are appointed by the Governor, with the advice and consent of the Senate, for nine-year terms.

(See Table 1 for the authorized number of judges in the State Judiciary.)

1.2 Court Administration

Section 28 of Article VI of the State Constitution provides that the Chief Judge of the Court of Appeals is the Chief Judge of the State and its chief judicial officer. The Chief Judge appoints a Chief Administrator of the Courts (who is called the Chief Administrative Judge of the Courts if the appointee is a judge) with the advice and consent of the Administrative Board of the Courts. The Administrative Board consists of the Chief Judge as chairman and the Presiding Justices of the four Appellate Divisions of the Supreme Court.

The Chief Judge establishes statewide administrative standards and policies after consultation with the Administrative Board of the Courts and promulgates them after approval by the Court of Appeals.

The Chief Administrator, on behalf of the Chief Judge, is responsible for supervising the administration and operation of the trial courts and for establishing

and directing an administrative office for the courts, called the Office of Court Administration (OCA). In this task, he is assisted by two Deputy Chief Administrative Judges, who supervise the day-to-day operations of the trial courts in New York City and in the rest of the state, respectively; a Deputy Chief Administrator, who supervises the operations of the units that make up the Office of Management Support; and a Counsel, who directs the legal and legislative work of the Counsel's Office.

The Office of Management Support provides the administrative services required to support all court and auxiliary operations. These services include personnel and budget administration; programs and planning operations; operational services; educational programs for judges and nonjudicial personnel; public information services; employee relations; equal employment opportunity programs; an office of Inspector General; and the Community Dispute Resolution Centers Program.

Counsel's Office prepares and analyzes legislation, represents the Unified Court System in litigation, and provides various other forms of legal assistance to the Chief Administrator of the Courts.

Chapter 156 of the Laws of 1978 implements the constitutional provisions on the administrative supervision of the court system. Sections 211-213 of Article 7-A of the Judiciary Law set forth the administrative functions of the Chief Judge, the Chief Administrator, and the Administrative Board. (See Figure 2.)

1.3 Court Finances

For the New York State fiscal year ending March 31, 1983, the anticipated expenditures for operating all the state courts, except town and village justice courts, were \$508.2 million.

1.4 Key Developments in the Unified Court System

There were a number of significant achievements and developments in 1982 in the operations of the courts and in the administration of the Unified Court system. Discussed below, they demonstrate the Judiciary's strong, continuing commitment to making maximum use of limited resources at a time of increased caseloads and fiscal restraint in order to realize the promise of fair and speedy justice for all citizens.

1.4.1 Unified Court System Caseload Activity — 1979-1982

A steady rise in the filing of major criminal and civil cases during the past three years is the principal characteristic of caseload activity in the Unified Court System. Statistical measures of caseload activity show that programs to address increased filings have succeeded, but that insufficient judicial resources have been available to keep pace with heavier criminal and civil

workloads simultaneously. The statistics show the importance of the Legislature's approval in 1982 of the Unified Court System's request for additional judges.

"Caseload Activity Statewide — 1979-1982," Table 2, shows the key statistical indicators. Criminal case filings in the Supreme and County Courts have increased significantly each year since 1979. Between 1979 and 1982, the number of criminal case filings in an average four-week court term increased by 47 percent. The increase has been less dramatic but equally steady every year for civil case filings in the Supreme Courts. Statewide, in an average court term in 1982, 16 percent more civil actions were filed than in an average term in 1979. The corresponding increase in New York City between 1980 and 1982 was 30 percent.

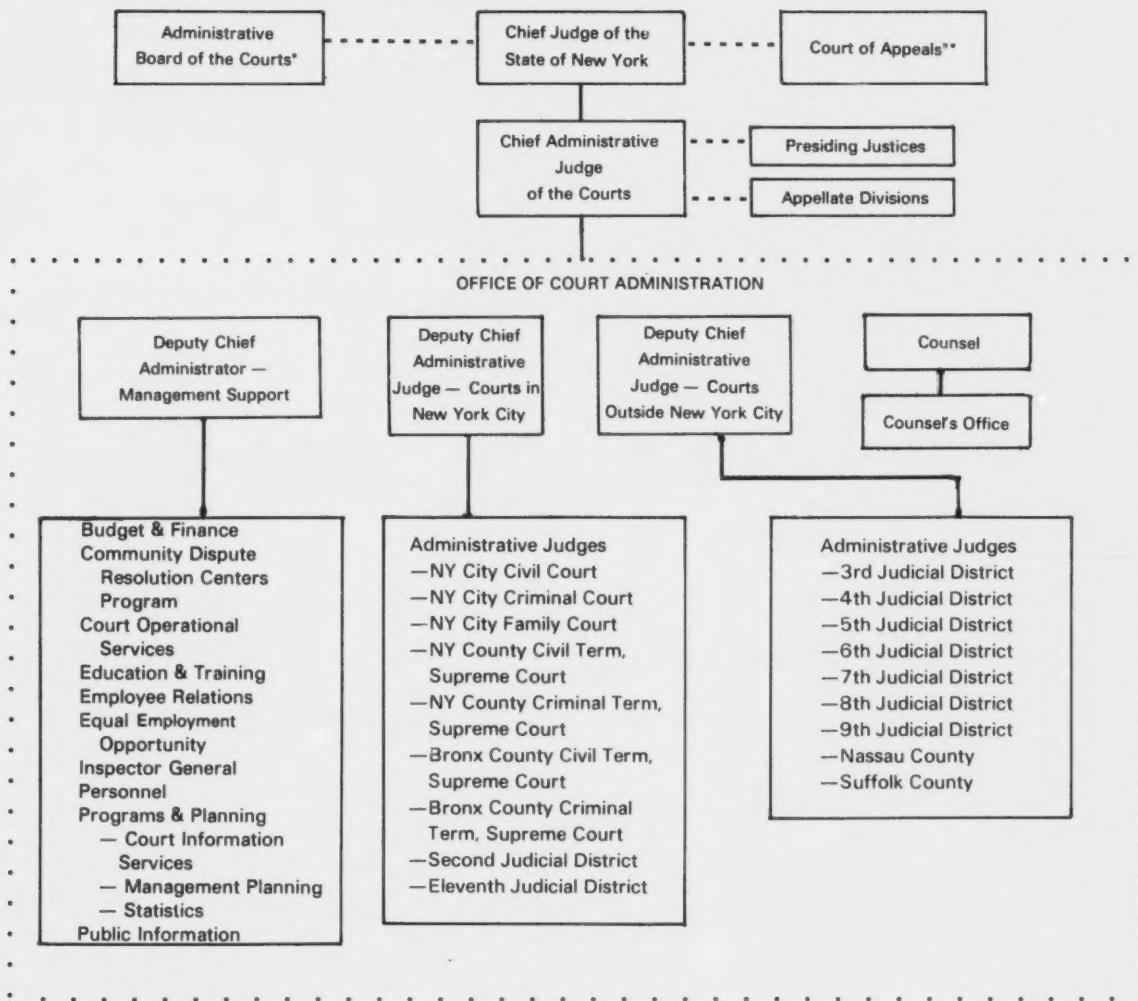
The statistics reflect the beneficial effects of the Chief Judge's 1980 plan to address burgeoning civil caseloads. Thirty-three additional Supreme Court civil parts were created. They were presided over by judges transferred as needed to districts requiring additional resources. The number of judge days sat in civil cases increased by 30 percent in 1980, with a resulting 23 percent increase in dispositions and a 22 percent decrease in the active inventory of civil cases at the end of 1980 compared with the inventory at the end of 1979.

Another element of the 1980 program to reduce court congestion was the Alternative Dispute Resolution by Arbitration Program (see Chapter 2 for a detailed discussion on this program) which, since January 1980, has been expanded from four to 31 counties. This program has made a significant contribution to the judicial process by reducing costs, speeding case processing and relieving the case backlog in the civil courts of lesser jurisdiction. In 1982, a total of 20,749 cases (which would have remained on a court calendar) were processed by the program. Of those, only 9.9 percent requested a trial *de novo*.

Meanwhile, however, criminal (felony) case filings in the Supreme and County Courts were increasing sharply during 1980 (up 14 percent statewide; up 19 percent in New York City; up 7 percent outside New York City). Consequently, under another of the Chief Judge's plans, the emphasis in the assignment of judicial resources was shifted to criminal cases during 1981. Criminal case filings were up 19 percent statewide in 1981, and calendared appearances in criminal cases in the Supreme and County Courts increased by 17 percent. The shift of judges from civil to criminal cases resulted in a 15 percent increase in judge days sat on criminal cases in 1981 compared with 1980, and a 19 percent increase in criminal case dispositions. The success of this program during 1981 was not achieved, however, without losing ground in the disposition of civil cases in the Supreme Courts, which experienced a 17 percent decrease in judge days sat statewide compared with 1980, a 13 percent decline in dispositions, and a 17 percent decline in the number of trials.

During 1982, criminal (felony) case filings continued to increase sharply in New York City, with filings up 18 percent in 1982 compared with 1981. Statewide, the corresponding increase in criminal case filings was 9 percent in 1982, because the courts outside New York City experienced a decrease of 3 percent. At

Figure 2
NEW YORK STATE JUDICIAL SYSTEM
Administrative Structure



*Generally a consultative body.

**After consultation with the Administrative Board, the Chief Judge submits standards and administrative policies to Court of Appeals for approval.

the same time, the statewide rise in civil filings during 1982 did not abate. These were up 9 percent over 1981, with a 12 percent increase in New York City and a 7 percent increase outside New York City.

In September 1981, the continuation of the Chief Judge's criminal plan to address rising levels of felony case filings—and, in particular, the sharp increase in the inventory of criminal cases in New York City not in compliance with the Unified Court System's standard for disposition (six terms, or 24 weeks, from the date of indictment)—resulted in the assignment of even higher levels of judicial resources to criminal cases in New York City. In January 1982, a case management program specifically tailored to dispose of New York City's old criminal cases—the Felony Backlog Reduction Program—was started. Table 3 shows the effectiveness of these approaches. The table compares criminal case activity in the Supreme Courts in New York City from September 1980 to August 1981 with the corresponding activity from September 1981 to August 1982. The results are striking, with dispositions up 12 percent, judge days on trial up 14 percent, and the "old case" inventory down 6 percent despite an increase in filings of 15 percent in the 1981-82 period compared with 1980-81. (See also the discussion on Standards and Goals in Chapter 2.)

1.4.2 New Judgeships

As seen from the above statistical review, the courts are suffering the effects of a two-pronged assault—both civil and criminal filings are increasing markedly. To assist the courts in dealing with the increases, the Legislature authorized, through Chapter 500, Laws of 1982, a total of 83 new judgeships. It also renewed 15 "part b" Court of Claims judgeships, who are assigned to preside over felony cases as Acting Supreme Court Justices.

Of the 83 new judgeships, 72 were to be established by January 1, 1983. In addition, 11 New York City Civil Court judgeships are to be established January 1, 1984. The 72 to be established by January 1, 1983, were to be allocated as follows:

New York City—42, including 14 Supreme Court, 3 Family Court, 16 "part c" Court of Claims and 9 Criminal Court (only the 14 new Supreme Court Justices were in place when 1983 began).

Fifth District—3, including 1 Supreme Court, 1 County Court (Oswego) and 1 Family Court (Onondaga);

Sixth District—2, including 1 Supreme Court and 1 County Court (Chemung);

Seventh District—3, including 2 Supreme Court and 1 County Court (Monroe);

Eighth District—5, including 2 Supreme Court, 2 County Court (Allegany and Erie) and 1 "part c" Court of Claims (when 1983 began, the Court of Claims judgeship was unfilled);

Ninth District—4, including 2 Supreme Court, 1 County Court (Westchester) and 1 Family Court (Westchester);

Tenth District—13, including 5 Supreme Court, 4 County Court (Suffolk), 2 Family Court (Suffolk) and 2 "part c" Court of Claims (Suffolk) (the two Court of Claims judgeships were not filled).

Consequently, of the 72 new judgeships to be

established by January 1, 1983, only 41 were filled as of that date.

The 72 additional judgeships that were to be established across the state would have significantly reduced the need to continue the number of judges who were being transferred for the purpose of reducing civil case backlogs. The 10 "transfer parts" operating in Suffolk County were eliminated January 1, 1983. But the 19 transfer parts operating in New York City, which were to be reduced to 11 effective January 1, 1983, had to be continued because of the failure to fill 19 new Court of Claims judgeships, 16 of which had been planned to be assigned to New York City.

1.4.3 Back-Office Staffing In Courts of Original Jurisdiction

The addition of the new judgeships and the provision of additional nonjudicial staff for the new parts and supporting back-office operations will not address the mounting back-office problems that have been developing over the past several years. Since 1980, the Judiciary has made maximum use of its resources to meet increased civil and criminal filings by implementing innovative programs, such as the Felony Backlog Reduction and Civil Backlog Reduction Plans, without any significant increase in nonjudicial staff. The emphasis on reducing case delay and meeting the Judiciary's dispositional standards and goals (see Chapter 2) required the increase of trial part staff at the expense of back-office operations.

The substantial increase over the past several years in case filings and dispositions has placed a great burden on back-office operations. As to civil cases, the docketing of entries has been reduced to minimal opening and closing entries instead of the appropriate case history information. Serious delays exist in checking proposed orders and in filing essential court papers. Desirable in-depth review of procedural aspects of motions cannot be done. On the criminal side, the statutorily mandated record sealing requirements are delayed, often for months, and routine clerical work, such as filing, is seriously backlogged.

The situation in the back-offices is further exacerbated by the workload associated with two programs recently established by the Legislature. Chapter 55 of the Laws of 1982, established on May 12, 1982, the Penalty Assessment Program, which provides for the imposition of penalty assessments in criminal cases. Such assessments are to be imposed by a court upon persons convicted of various degrees of crime, in addition to any sentence required or permitted by law.

Chapter 1022 of the Laws of 1981 established a Small Claims Assessment Review Program in the Supreme Court throughout New York State effective January 1, 1982. This program permits an owner of real property to object to an assessment on the grounds that such assessment is unequal because it is assessed at a higher proportion of value than other residential property. These cases are heard by specially designated hearing officers, avoiding the lengthy time period and considerable expense of a typical civil case. About 1,200 cases have been heard since the program's inception. As the public becomes more aware of this program, workload is projected to increase.

1.4.4 Law Library Operations

Substantial funding reductions in the face of severe cost increases in the legal reference material industry have combined to seriously impair the ability of law libraries to provide needed services. In recognition of the need to significantly improve the management of the libraries, a Chief Law Librarian was appointed. This position is responsible for establishing acquisition policies and procedures, evaluating and implementing automated systems and creating an effective library network.

1.4.5 Jury System Management Improvements

In cooperation with the Association of Commissioners of Jurors and with the assistance of the National Center for State Courts, the Office of Court Administration has undertaken a major jury administration improvement project within the Unified Court System that will continue through the 1983-84 fiscal year.

Among the elements of jury administration identified as critical to the operation of jury systems are juror utilization (including summoning, term of service, jury pool and panel size, calendar coordination, and excuses and postponements), exemptions, source lists, qualification, orientation, and *voir dire*.

Much of the joint jury administration improvement effort during 1981 consisted of data collection and analysis by OCA for the juror utilization element area. As this activity proceeded, the Center for Jury Studies of the National Center for State Courts was invited to join the work, which was organized along formal lines in May 1982 into the Jury Administration Improvement Project of the New York State Unified Court System. The advisory committee of this statewide project currently consists of a number of experienced public officials and interested representatives of the public.

In the first phase of the project, New York, Queens, and Nassau Counties were selected for on-site work. In 1983-84 additional counties will be targeted, and Jury Commissioners from those counties will be added to the project advisory committee. This project represents a statewide effort to bring together individuals with responsibility for the efficiency and cost-effectiveness of jury administration systems in New York State to work cooperatively towards improvement of those systems for the citizens of New York.

Automation of juror qualification summoning and payment functions through the Office of Court Administration's jury management system has greatly enhanced the effectiveness of jury operations. The system is currently serving New York, Kings, Monroe, Erie and Niagara Counties, with Westchester and Queens to be operational before the end of the 1982-83 fiscal year. During the 1983-84 fiscal year, the automated jury management system will be expanded to Nassau, Suffolk and Richmond Counties. Also provided for is the extension of these automated capabilities to smaller counties through a regional approach which uses the capabilities of the automated systems in large counties

to serve the other counties within the judicial district. Regionalization was started in the Seventh (Monroe County), Eighth (Erie County) and Ninth (Westchester County) Judicial Districts in 1982 and will be extended to the Third, Fourth, Fifth and Sixth Judicial Districts in 1983.

1.4.6 Community Dispute Resolution Centers Program

At present, state funding is being provided to 21 locally operated Dispute Resolution Centers in 19 counties. As a result of a favorable response to a statewide solicitation by the program, it is anticipated that state funding will be provided in 1983-84 to 19 more centers serving an additional 22 counties where mediation services have previously been unavailable.

In the program's first 18 months (April 1, 1981-September 30, 1982), 20 centers operating in 18 counties processed 58,787 referrals and diverted 17,495 cases from the courts through conciliation, mediation, and arbitration proceedings. (Copies of a report on these activities are available from the OCA Public Information Office.)

1.4.7 Court Facilities Task Force Recommendations

On September 29, 1982, the State Court Facilities Task Force, established by Chief Judge Cooke in December 1980, issued a report and recommendations. Of primary significance, the considerable work of the Task Force documented a condition in the courts of this State which supports the ultimate recommendation of the Task Force that "the State should assume all responsibility for the cost of providing all facilities whether through construction, purchase or lease and their proper maintenance and operation of all courts other than Town and Village Courts." The Task Force found that nearly 60% of the total space occupied by the courts is in buildings found to have "major inadequacies" and that nearly half of the courtrooms "appeared shabby, in need of painting or plastering, or showed other evidence of wear and tear." Local governments have been unable to effectively meet their responsibility in this critical area; the State must address this condition.

Funds have been requested to carry out two of the Task Force's recommendations: (1) to identify courtrooms where inaudibility is a serious problem and to install appropriate microphones; and (2) formulate and monitor standards and guidelines for court maintenance and custodial services. (Copies of the Task Force's full report are available from the OCA Public Information Office.)

1.4.8 Utilization of Retired Judges

On November 4, 1982, the Committee to Utilize the Services of Retired Judges, which the Chief Judge appointed in February 1982, issued its report and

recommendations. The committee concluded that the goal of improved judicial efficiency would be enhanced by creating a position of Judicial Hearing Officer and appointing qualified retired judges to such a post. As Judicial Hearing Officers, the retired judges would hear and determine pretrial matters in civil proceedings, hear and report on pretrial motions in criminal cases, and, with the consent of the parties, hear and determine minor criminal matters not requiring a jury trial. (Copies of the Committee's full report are available from the OCA Public Information Office.)

1.4.9 Computerization

In 1982, the civil case processing system in place in Nassau County was extended to Westchester. An automated capability will be developed for the civil term of Supreme Court in New York County in 1983.

A major study of the automation needs of Family Court was completed in 1982 and system implementation was initiated. In 1983, this system will be implemented in New York City and then extended to Westchester and Nassau Counties.

1.4.10 Administrative Reorganization

The administrative reorganization which began in December 1980 with the creation of the position of Deputy Chief Administrator for Management Support, centralizing responsibility for supervision of all management support services of the Office of Court Administration, had a profound and positive effect on the court system. The abolition of the Departmental Directors of Administration and the placement of their responsibility for general administrative functions in the offices of the District Administrative Judges, the creation of the Office of Management Support, and the establishment of a new Office of Court Operational Services within the Office of Management Support have all contributed to the elimination of the many structural gaps which existed previously and have streamlined and strengthened the management of the court system.

The reorganization has continued with the formation of the Office of Programs and Planning in the Office of Management Support. Three existing units (Management Planning Office, Court Information Services, and Statistics Unit) now operate within the new office, which is one of 10 units constituting the Office of Management Support. The primary function of the Office of Programs and Planning is to supervise and coordinate the activities of these three units and to assist court policy makers and administrators in developing and maintaining court improvement programs.

1.4.11 Legislative Proposals

The 1982 legislative session witnessed enactment of a number of important legislative measures proposed or supported by the Judiciary (see also Chapter 4, Legislation and Rule Revision). Chief among these measures were:

— Chapters 500 and 501 of the Laws of 1982, authorizing the addition of 98 new judgeships, including 27 new

Supreme Court justices, 10 new County Court judges, 7 new Family Court judges, up to 34 new Court of Claims judges, 9 new Criminal Court judges and 11 new Civil Court judges. (See Section 1.4.2, above.)

— Chapters 353, 638 and 640 of the Laws of 1982, implementing 1982-85 collective bargaining agreements between the Judiciary and public employee unions representing the members of all 37 negotiating units of nonjudicial court employees. In all, over 10,000 employees are affected.

In addition, there were several noteworthy measures proposed by the Judiciary affecting practice in the civil, criminal and family trial courts of the state. Those enacted include:

— Chapter 20, increasing to 5 days the additional period of time authorized for response to service by mail in civil matters.

— Chapter 679, authorizing use of telephonic search warrants in criminal matters.

— Chapter 117, mandating that a petition to extend placement in a neglect or child abuse case be filed at least 60 days prior to expiration of placement.

— Chapter 379, requiring written notice to parents when an abused or neglected child is removed from them.

— Chapter 773, requiring the moving party to pay the cost of blood grouping tests in support of paternity proceedings.

Consistent with a longstanding commitment to cost containment and improvement of the judicial process, the Judiciary continued its support of a number of notable legislative measures, including proposals to vest primary responsibility for the conduct of *voir dire* in a criminal case in the trial judge, to establish an appellate court for the review of felony sentences, to mandate merger of the trial courts of the Unified Court System and to permit deliberating juries in criminal cases to separate overnight and on weekends.

The merger of the trial courts of the Unified Court System continues to be strongly supported. There are currently 11 different kinds of trial courts in the Unified Court System. This multiplicity of trial courts is inefficient, causes confusion, is difficult to manage, and increases operational costs. A court reform amendment providing for merger, supported by the Chief Judge and the Chief Administrative Judge, was again introduced at the request of the Governor in 1982, but was not acted on.

1.5 Other Administrative Actions of the Chief Judge and of the Chief Administrative Judge

In 1982, Chief Judge Lawrence H. Cooke, pursuant to Article VI, sections 26 and 28 of the New York State Constitution, upon consultation with the Administrative Board of the Courts and with the approval of the Court of Appeals, promulgated a standard and administrative policy governing the temporary assignment of justices and judges pursuant to Article VI, section 26, of the New York State Constitution. The new standard and administrative policy became Part 33 of the Rules of the Chief Judge of the State of New York (22 NYCRR

Part 33).

In addition, Chief Administrative Judge Herbert B. Evans, exercising powers delegated by the Chief Judge or by statute, and at the direction of the Chief Judge, took several significant actions. He extended the Arbitration Program (Alternative Method of Dispute Resolution by Arbitration, 22 NYCRR Part 28) to Erie, Chemung, Schuyler and Tompkins Counties (Erie County, effective January 1, 1983), thereby making the Arbitration Program operational in 31 counties.

Pursuant to Article VI, sections 26 and 28 of the New York State Constitution and section 33.1 of the Rules of the Chief Judge, and after consultation with the Presiding Justices of the Appellate Divisions of the First and Second Judicial Departments, the Chief Administrative Judge promulgated Part 121 of the rules of the Chief Administrator (22 NYCRR Part 121) governing the temporary assignment of judges of the Civil and Criminal Courts of the City of New York to the Supreme Court and featuring a 10-member Acting Supreme Court Justice Advisory Committee, chaired by Dean Emeritus Jerome Prince, to recommend Criminal and Civil Court judges for rotated assignment to the Supreme Court.

Pursuant to Article VI, section 28(b) of the Constitution and Title 1-A of Article 7 of the Real Property Tax Law, the Chief Administrative Judge promulgated interim rules governing the new special proceedings for small claims real property tax assessment review, appointed small claims assessment review hearing officers to preside over those proceedings, and provided training courses for the hearing officers.

He also promulgated and amended a new rule (22

NYCRR Part 120), and established special adjournment parts in the Supreme Court in each county within the City of New York, for the processing of applications for adjournments of criminal matters pending in the criminal terms of the Supreme Court in such counties where such applications are made more than six months after the date of indictment, except for applications made during trial.

A new arraignment part in the Criminal Court of the City of New York, County of New York, Part AR-5, open during the hours from 1:00 a.m. to 9:00 a.m., was established by the Chief Administrative Judge.

He also established a new pre-calendar Part 8-A in the Supreme Court, Suffolk County and promulgated rules regulating the operation of the new 8-A Part and of the disclosure conference held in that part (22 NYCRR 790.30). These actions added Suffolk County to the three other counties (Nassau, New York and Kings) having operational 8-A Parts.

In addition, the Chief Administrative Judge promulgated revised Official Family Court Forms pursuant to section 214 of the Family Court Act, amended section 118.2 of the Rules of the Chief Administrator (22 NYCRR 118.2) in relation to public access to attorney registration information, and directed that the New York State Tax Commission deliver mailing lists of taxpayers to specific Commissioners of Jurors to facilitate the compiling of adequate and complete lists of persons who might be prospective jurors (such lists were previously unavailable for this public service program because they were regarded as confidential under Tax Commission regulations).

Table 1
NEW YORK STATE JUDICIAL SYSTEM
Authorized Number of Judges
December 31, 1982

<i>Number of Judges</i>	<i>Court</i>
7	Court of Appeals
24 ^a	Supreme Court, Appellate Divisions
263 ^{abc}	Supreme Court, Trial Parts
50 ^a	Supreme Court — Certificated Retired Justices
17	Court of Claims
14	Court of Claims — Judges appointed pursuant to Chapter 603, Laws of 1973, Emergency Dangerous Drug Control Program
34	Surrogates' Courts — including 6 Surrogates in the City of New York
59 ^d	County Courts — County Judges outside the City of New York, in counties that have separate Surrogates and Family Court Judges
9	County Courts — County Judges who are also Surrogates
8	County Courts — County Judges who are also Family Court Judges
30 ^c	County Courts — County Judges who are also Surrogates and Family Court Judges
110 ^e	Family Courts — including 42 Family Court Judges in the City of New York
107 ^f	Criminal Court of the City of New York
120 ^g	Civil Court of the City of New York
49	District Courts — in Nassau and Suffolk Counties
167 ^h	City Courts in the 61 Cities outside the City of New York — including Acting and Part-Time Judges
1,068	Total
2,327	Town and Village Justice Courts

^a In addition to the 24 Supreme Court Justices permanently authorized, 16 Justices and 8 Certificated Retired Justices were temporarily designated to the Appellate Division.

^b Does not include judges of other courts, especially the Civil and the Criminal Courts of the City of New York, who sat as Acting Supreme Court Justices during the year.

^c Does not include the changes authorized by the 1982 Session Laws, Chapter 500 which increased the number of Justices of the Supreme Court by: 10 in the Second District; 1 in the Fifth District; 1 in the Sixth District; 2 in the Seventh District; 2 in the Eighth District; 2 in the Ninth District; 5 in the Tenth District; 4 in the Eleventh District.

^d Does not include the changes authorized by the 1982 Session Laws, Chapter 500 which increased the number of County Court Judges by: 1 in Allegany; 1 in Chemung; 1 in Erie; 1 in Monroe; 1 in Oswego; 4 in Suffolk; 1 in Westchester.

^e Includes the 3 Family Court Judgeships in New York City authorized by the 1982 Session Laws, Chapter 500. Does not include the changes in Family Court Judgeships outside New York City authorized by the 1982 Session Laws, Chapter 500 which increased the number of Family Court Judgeships by: 1 in Onondaga; 1 in Westchester; 2 in Suffolk.

^f Does include the additional 9 Criminal Court Judgeships authorized by the 1982 Sessions Laws, Chapter 500.

^g Does not include the additional 11 Civil Court Judgeships authorized by the 1982 Session Laws, Chapter 500.

^h Does not include the changes in the City of Yonkers authorized by the 1980 Session Laws, Chapter 513: effective January 1, 1984, the remaining 2 City Justice judicial positions shall be abolished.

Table 2
CASELOAD ACTIVITY STATEWIDE: 1979-82

1 Term = 4 weeks
N/A — not applicable

Criminal Cases in Supreme & County Courts

Civil Cases in Supreme Court

		1982 (10 Terms = 40 Weeks)				1982 (10 Terms = 40 Weeks)			
Category		1979	1980	1981		1979	1980	1981	
Filings (Criminal)	Total	30,807	35,026	41,587	34,779	62,692	64,212	66,623	55,835
Action received (Civil)	Average/Term % change from previous year	2,370	2,694	3,199	3,478	4,822	4,939	5,125	5,584
		N/A	+14%	+19%	+9%	N/A	+2%	+4%	+9%
Dispositions	Total	33,503	34,966	41,650	32,796	63,625	77,957	68,117	48,857
	Average/Term % change from previous year	2,577	2,689	3,203	3,280	4,894	5,997	5,240	4,886
		N/A	+4%	+19%	+2%	N/A	+23%	-13%	-7%
Calendared appearances (criminal only)	Total	377,536	404,962	474,154	376,584				
	Average/Term % change from previous year	29,041	31,151	36,473	37,658				
		N/A	+7%	+17%	+3%	N/A	N/A	N/A	N/A
Judge days sat	Total	45,395	45,656	52,658	43,374	44,007	57,300	49,655	36,253
	Average/Term % change from previous year	3,492	3,512	4,050	4,337	3,385	4,408	3,820	3,625
		N/A	+0.5%	+15%	+7%	N/A	+30%	-13%	-5%
Judge days on trial	Total	21,902	19,902	23,277	18,334	32,480	34,512	28,695	20,538
	Average/Term % change from previous year	1,684	1,530	1,790	1,833	2,498	2,655	2,207	2,054
		N/A	-9%	+17%	+2%	N/A	+6%	-17%	-7%
Trials commenced	Total	4,353	4,240	5,003	3,904	no records	21,184	17,547	12,289
	Average/Term % change from previous year	335	326	385	390		1,630	1,350	945
		N/A	-3%	+18%	+1%	N/A	N/A	-17%	-30%
Pending at end of period	Total	15,873	15,435	16,713	18,455	61,996	48,429	47,540	55,350
	% change from previous year	N/A	-3%	+8%	+10%	N/A	-22%	-2%	+16%
Inventory not in compliance with Standards & Goals at end of period	Total	no records	4,751	5,533	5,212	no records	12,001	11,009	12,481
	% change from previous year	N/A	N/A	+16%	-6%	N/A	N/A	-8%	+13%

Table 3
CRIMINAL CASELOAD ACTIVITY
New York City Supreme Court

1 Term = 4 weeks

Category	September, 1980- August, 1981 (13 Terms)	September, 1981- August, 1982 (13 Terms)	% Change
Filings	24,245	27,820	+ 15%
Dispositions	23,179	25,948	+ 12%
No. of Calendared Appearances	342,628	386,386	+ 13%
Judge days sat	31,499	38,103	+ 21%
Judge days on trial	16,120	18,317	+ 14%
Inventory not in compliance with Standards & Goals at end of period	4,091	3,696	- 10%

Caseload Activity Report

2.1 Introduction

Nearly 2.4 million new cases¹ (2,384,974) were filed in the trial courts of the Unified Court System during 1982.² Figure 3 shows the breakdown of filings by type of case. Criminal cases, including all cases initiated by arrest or other action by law enforcement and related agencies,³ accounted for 52 percent of filings. The remaining breakdown was as follows - civil: 29 percent; family: 14 percent; surrogates⁴: 5 percent.

Dispositions in the trial courts⁴ during 1982 totaled nearly 2.2 million cases (2,158,426). Figure 4 shows the breakdown by types of case, as follows - criminal⁵: 49 percent; civil: 33 percent; family: 14 percent; surrogates⁶: 4 percent.

2.2 Criminal Cases

More than 1.2 million criminal cases were filed (1,234,323) and nearly 1.1 million disposed (1,053,319) in the criminal trial courts of the unified court system during 1982 (excluding town and village courts).

Criminal cases⁶ are processed in the following courts: Felony indictments in the Supreme Court, Criminal Term in New York City and in the County Courts outside New York City; misdemeanors, violations, and felony complaints (pre-indictment) in the Criminal Court of the City of New York and in the City, Town, Village, and District (Nassau and Suffolk Counties) Courts outside New York City.

Felony Cases⁷

Filings: Statewide, 47,364 cases were filed in the Supreme and County Courts during 1982, an increase

of 14 percent over 1981 and 35 percent over 1980. Sixty percent of the total were filed in New York City. Filings increased 24 percent in New York City compared to 1981 and by 42 percent compared to 1980.

Ten courts accounted for 82 percent of all filings. Table 4 ranks these courts by volume. Table 5 ranks filings by judicial district or county, with the change for each from 1981.

Dispositions: Statewide, 43,101 cases reached disposition (guilty plea, trial verdict, dismissal, or other) during 1982, an increase of 3 percent over 1981 and 23 percent over 1980.

Ten courts accounted for 80 percent of all 1982 dispositions. Table 6 ranks these courts by volume. Table 7 ranks dispositions by judicial district or county.

Figure 5 shows felony case dispositions statewide by type during 1982. Statewide, guilty pleas accounted for 74 percent of dispositions; trial verdicts for 10 percent; dismissals and other dispositions for 16 percent. In the Supreme Courts in New York City, the comparable figures were as follows - guilty pleas: 70 percent; trial verdicts: 12 percent; dismissals, other: 18 percent. The figures for the County Courts outside New York City were as follows - guilty pleas: 79 percent; trial verdicts: 8 percent; dismissals, other: 13 percent.

During 1982, 5,012 criminal trials were commenced in the Supreme and County Courts statewide, nearly equal to the total of 5,003 in 1981. Ten courts accounted for 85 percent of all criminal trials commenced. Table 8 ranks these courts by volume.

¹All data in this chapter is from the Caseload Activity Reporting System of the Unified Court System. Courts performing local data entry and compilation (partially computerized) report to the Office of Court Administration pursuant to the Rules of the Chief Administrator of the Courts. 22 NYCRR 115.

^{2/4}Excludes Town and Village Courts. Figures are not yet available, but an estimated additional two million cases were filed in these courts during 1982.

^{3/5}The definition for purposes of this section includes juvenile delinquency cases, motor vehicle cases filed in the trial courts, as well as all summons cases returnable in the Criminal Court of the City of New York.

⁶The definition for the purposes of this section does not include juvenile delinquency cases, which are processed in the family courts.

⁷"Cases" are expressed as "defendant-indictments"; i.e., each defendant on each indictment counts as one case.

Figure 3
BREAKDOWN OF TRIAL COURT FILINGS BY CASE TYPE
(Town and Village Courts Excluded)
1982

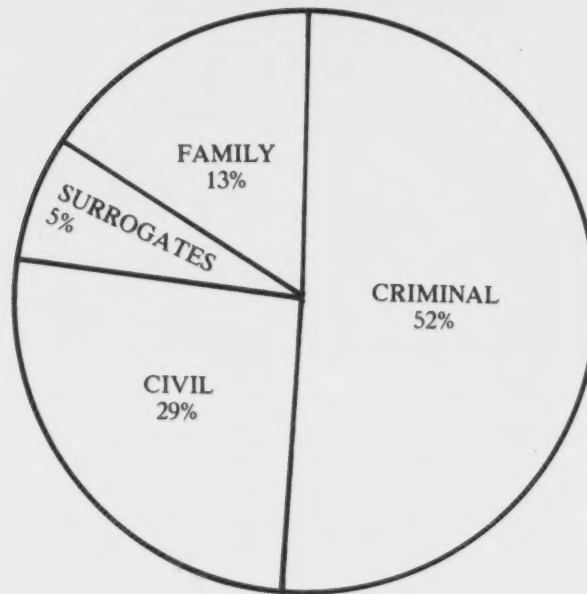


Figure 4
BREAKDOWN OF TRIAL COURT DISPOSITIONS BY CASE TYPE
(Town and Village Courts Excluded)
1982

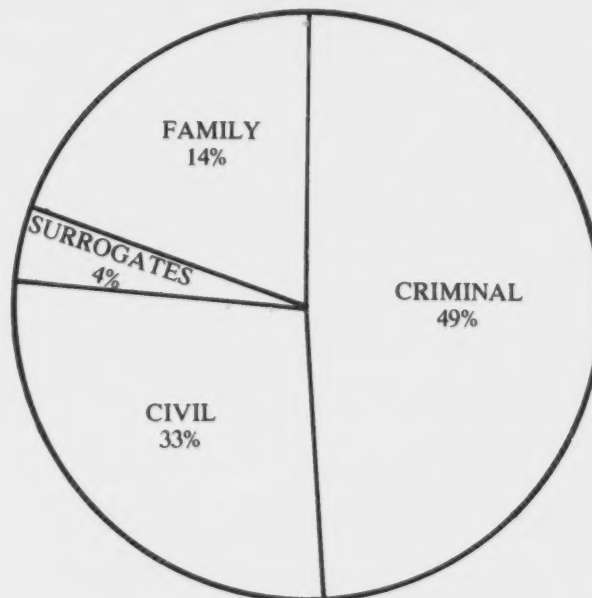


Table 4
DEFENDANT-INDICTMENTS FILED DURING 1982
Top Ten Courts by Volume

<i>Court</i>	<i>Filings</i>
New York Supreme Court	10,540
Kings Supreme Court	7,182
Bronx Supreme Court	5,716
Queens Supreme Court	4,330
Suffolk County Court	3,172
Nassau County Court	2,621
Westchester County Court	1,623
Erie County Court	1,427
Monroe County Court	1,329
Onondaga County Court	1,066

Table 5
DEFENDANT-INDICTMENTS FILED DURING 1982
Judicial Districts and Counties by Volume*

<i>District or County</i>	<i>Filings</i>	<i>Change from 1981</i>
New York County	10,540	+37%
Kings County	7,182	+17%
Bronx County	5,716	+25%
Queens County	4,330	+13%
Suffolk County	3,172	+3%
Ninth Judicial District	2,762	+5%
Nassau County	2,621	+10%
Eighth Judicial District	2,291	+17%
Seventh Judicial District	2,171	-1%
Fifth Judicial District	2,056	-8%
Sixth Judicial District	1,580	-4%
Fourth Judicial District	1,255	-9%
Third Judicial District	1,228	-3%
Statewide	47,364	+14%
New York City	28,228	+24%
Outside New York City	17,136	+2%

*An Administrative Judge is assigned to each of the districts or counties shown in this table.

Table 6
DEFENDANT-INDICTMENTS DISPOSED DURING 1982
Top Ten Courts by Volume

<i>Court</i>	<i>Dispositions</i>
New York Supreme Court	8,371
Kings Supreme Court	6,429
Bronx Supreme Court	4,646
Queens Supreme Court	4,006
Suffolk County Court	3,052
Nassau County Court	2,440
Westchester County Court	1,670
Erie County Court	1,460
Monroe County Court	1,252
Onondaga County Court	1,137

Table 7
DEFENDANT-INDICTMENTS DISPOSED DURING 1982
Judicial Districts and Counties by Volume*

<i>District or County</i>	<i>Dispositions</i>	<i>Change from 1981</i>
New York County	8,371	+ 2%
Kings County	6,429	+ 10%
Bronx County	4,646	+ 2%
Queens County	4,006	+ 9%
Suffolk County	3,052	+ 6%
Ninth Judicial District	2,630	+ 8%
Nassau County	2,440	- 1%
Eighth Judicial District	2,400	- 1%
Fifth Judicial District	2,234	+ 2%
Seventh Judicial District	2,099	- 5%
Sixth Judicial District	1,667	+ 2%
Third Judicial District	1,358	+ 11%
Fourth Judicial District	1,291	- 9%
Statewide	43,101	+ 3%
New York City	23,930	+ 5%
Outside New York City	19,171	+ 2%

*An Administrative Judge is assigned to each of the districts or counties shown in this table.

Figure 5
CRIMINAL CASES IN SUPREME AND COUNTY COURTS
Breakdown of Total Dispositions = 43,101



Table 8
CRIMINAL TRIALS COMMENCED, SUPREME AND COUNTY COURTS
Top Ten Courts by Volume
1982

<i>Court</i>	<i>Trials Commenced</i>
New York Supreme Court	962
Kings Supreme Court	949
Bronx Supreme Court	673
Queens Supreme Court	659
Suffolk County Court	204
Nassau County Court	186
Erie County Court	184
Westchester County Court	182
Monroe County Court	171
Onondaga County Court	93

Criminal Courts of Limited Jurisdiction

Criminal Court of the City of New York: There were slightly over one million calendared appearances in this court during 1982 (1,017,821), up 17 percent compared to 1981.

Nearly 200,000 arrest cases (199,503) were arraigned in this court during 1982 and 204,617 were disposed. These were increases of 15 percent (arraignments) and 12 percent (dispositions) compared to 1981. Of the dispositions, 52 percent were by guilty plea, 28 percent by dismissal, 13 percent by referral to grand jury, and 0.4 percent by trial verdict. Another 6.6 percent reached disposition by other means (transfers to family court, transfers to other counties, etc.)

Summons cases accounted for another 132,121 arraignments in this court during 1982. Dispositions of summons cases totaled 143,463.

City and District Courts outside New York City: The 61 city courts and two district courts (Nassau and

Suffolk) accounted for 241,045 criminal case arraignments during 1982, up 11 percent over 1981. Dispositions of criminal cases in 1982 totaled 204,796, up 17 percent over 1981. Of the criminal case dispositions, 57 percent were by guilty plea, 37 percent were by dismissal, 3 percent were referred to grand jury, 1 percent were by trial verdict, and 2 percent were disposed by other means.

Figure 6 shows 1982 caseload activity in the above courts including separate statistics not described above for motor vehicle cases in the city and district courts outside New York City.

Table 9 shows 1982 criminal case arraignments in the Nassau and Suffolk District Courts and ranks the top ten city courts outside New York City by volume of arraignments in criminal cases. The ten city courts shown accounted for 59 percent of all criminal cases arraigned during 1982 in the city courts outside New York City.

Figure 6
CRIMINAL CASES IN TRIAL COURTS OF LIMITED JURISDICTION
1982

Criminal Court of the City of New York

Arrest Cases	
Arraignments	199,503
Dispositions	204,617

Summons Cases	
Arraignments	132,121
Dispositions	143,463

City Courts of the State of New York

Criminal Matters	
Arraignments	97,980
Dispositions	98,633

Motor Vehicle	
Arraignments*	88,017
Dispositions	248,993

District Courts of the State of New York

Criminal Matters	
Arraignments	143,065
Dispositions	106,163

Motor Vehicle	
Arraignments*	37,577
Dispositions	208,349

*This figure does not include cases for payment (by mail or personal appearance) processed in clerks' offices (statistics not available).

Table 9
CRIMINAL CASE ARRAIGNMENTS
Nassau and Suffolk District Courts and Top Ten
City Courts Outside New York City by Volume
1982

<i>Court</i>	<i>Arraignments</i>
Suffolk District Court	95,601
Nassau District Court	47,464
Buffalo City Court	17,343
Rochester City Court	15,173
Yonkers City Court	5,753
Syracuse City Court	5,330
Niagara City Court	2,984
Utica City Court	2,901
New Rochelle City Court	2,500
Schenectady Police Court	2,232
Newburgh City Court	1,946
Binghamton City Court	1,921

2.3 Civil Cases

Over 700,000 civil cases were filed (705,175) and disposed (706,919) in the civil trial courts of the unified court system during 1982 (excluding town and village courts).⁸

Civil cases are processed in the following trial courts: the Supreme Court hears cases involving damages claimed above the financial limits of the courts of limited jurisdiction, as well as matrimonial, tax certiorari, condemnation, medical malpractice, and other cases; the County, District and City Courts (including the Civil Court of the City of New York) hear cases involving damages claimed of \$10,000 or less (including small claims), as well as landlord/tenant, housing code enforcement, and other matters including cases transferred from Supreme Court under CPLR section 325. (The jurisdictional limit in the District and City Courts is a maximum of \$6,000, but many are less.) The Court of Claims hears civil cases involving the State of New York; and thirty counties hear cases involving \$6,000 or less in an Arbitration Program.

Supreme Court

Filings: Statewide, 73,277 cases were filed during 1982, an increase of 10 percent over 1981 and 14 percent over 1980. Ten courts accounted for 78 percent of all filings. Table 10 ranks these courts by volume. Table 11 ranks filings by judicial district or county, with the change for each from 1981.

Figure 7 shows statewide civil case filings in Supreme Court by case type. Motor vehicle tort cases accounted for 26 percent of all filings. All tort cases accounted for 49 percent of statewide filings (but 64 percent of New York City filings).

Dispositions: Statewide, 64,713 cases⁹ reached disposition during 1982. Ten courts accounted for 80

percent of all dispositions. Table 12 ranks these courts by volume. Table 13 ranks dispositions by judicial district or county, with the change from 1981.

During 1982, 16,067 civil trials were commenced in the Supreme Courts statewide, an 8 percent decrease compared to 1981. The rate of cases disposed by trial was 18 percent statewide; 16 percent in New York City; 19 percent outside New York City. Ten courts accounted for 77 percent of all civil trials commenced in the Supreme Courts. Table 14 ranks these courts by volume.

Civil Case Activity in Courts of Limited Jurisdiction (excluding Arbitration)

The following figure (Figure 8) shows filings and dispositions for 1982 (excluding arbitration cases) in the civil courts of limited jurisdiction.

Arbitration Program

Thirty counties have arbitration programs for cases involving claimed damages of less than \$6,000.

The arbitration program disposed of 20,749 cases during 1982, down from 23,637 (-12%) from 1981. New York City accounted for 52 percent of dispositions. Adding Nassau, Suffolk, and Westchester to New York City accounts for 85 percent of dispositions. Of the 20,749 dispositions, 73 percent were by hearing decision.

Statewide, arbitration filings totaled 18,869 during 1982, down from 21,295 (-11%) in 1981. Dispositions exceeded filings statewide by 10 percent. New York City accounted for 51 percent of all filings (85 percent with Nassau, Suffolk, and Westchester added). The arbitration inventory statewide at the end of 1982 was 4,662 cases, down 29 percent since the end of 1981.

The statewide trial *de novo* rate for 1982 was 9.9 percent. In New York City, the rate was 13 percent.

⁸The filings figure excludes uncontested matrimonials in the Supreme Court (statistics not available).

⁹Not including uncontested matrimonials, of which 56,671 were disposed during 1982.

Table 10
CIVIL CASES FILED IN SUPREME COURTS
Top Ten Courts By Volume
1982

<i>Court</i>	<i>Filings</i>
Nassau Supreme Court	12,508
New York Supreme Court	9,931
Kings Supreme Court	8,604
Suffolk Supreme Court	7,081
Queens Supreme Court	6,073
Westchester Supreme Court	4,177
Bronx Supreme Court	3,873
Erie Supreme Court	3,169
Monroe Supreme Court	1,829
Onondaga Supreme Court	1,662

Table 11
CIVIL CASES FILED IN SUPREME COURTS
Judicial Districts and Counties by Volume
1982

<i>District or County</i>	<i>Filings</i>	<i>Change from 1981</i>
Nassau County	12,508	+29%
New York County	9,931	+20%
Kings County	8,604	+ 5%
Ninth Judicial District	7,777	- 1%
Suffolk County	7,081	+ 7%
Queens County	6,073	+ 5%
Eighth Judicial District	4,265	- 2%
Bronx County	3,873	+15%
Fifth Judicial District	3,279	+ 2%
Seventh Judicial District	2,739	+11%
Third Judicial District	2,427	0
Fourth Judicial District	2,103	+ 4%
Sixth Judicial District	1,489	0
Statewide	73,277	+10%
New York City	29,609	+12%
Outside New York City	43,668	+ 9%

Figure 7
CIVIL CASES FILED IN SUPREME COURT BY TYPE
Statewide 1982

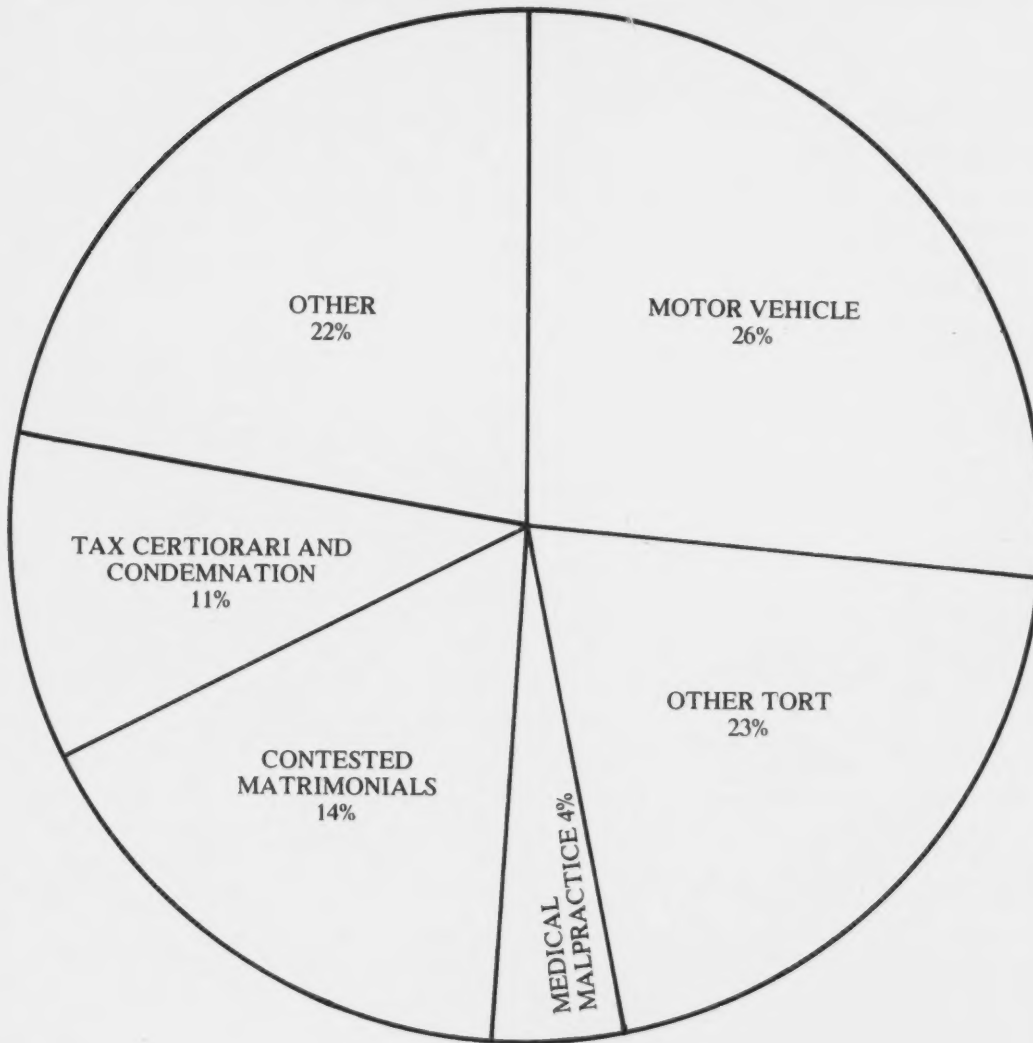


Table 12
CIVIL CASES DISPOSED IN SUPREME COURT
Top Ten Courts by Volume
1982

<i>Court</i>	<i>Dispositions</i>
Nassau Supreme Court	11,647
New York Supreme Court	8,288
Kings Supreme Court	6,989
Suffolk Supreme Court	6,153
Queens Supreme Court	4,962
Westchester Supreme Court	3,784
Bronx Supreme Court	3,600
Erie Supreme Court	2,684
Onondaga Supreme Court	1,714
Monroe Supreme Court	1,635

Table 13
CIVIL CASES DISPOSED IN SUPREME COURTS
Judicial Districts and Counties by Volume
1982

<i>District or County</i>	<i>Dispositions</i>	<i>Change from 1981</i>
Nassau County	11,647	+ 32%
New York County	8,288	+ 1%
Kings County	6,989	- 10%
Ninth Judicial District	6,852	- 26%
Suffolk County	6,153	- 19%
Queens County	4,962	- 18%
Eighth Judicial District	3,715	- 14%
Bronx County	3,600	- 5%
Fifth Judicial District	3,423	+ 6%
Seventh Judicial District	2,490	0
Third Judicial District	2,158	- 5%
Fourth Judicial District	2,052	- 3%
Sixth Judicial District	1,418	+ 3%
Statewide	64,713	- 5%
New York City	24,805	- 7%
Outside New York City	39,908	- 4%

Table 14
CIVIL TRIALS COMMENCED IN SUPREME COURTS
Top Ten Courts by Volume
1982

<i>Court</i>	<i>Trials Commenced</i>
Nassau Supreme Court	2,564
Suffolk Supreme Court	1,939
New York Supreme Court	1,706
Kings Supreme Court	1,664
Queens Supreme Court	1,325
Westchester Supreme Court	873
Monroe Supreme Court	704
Bronx Supreme Court	647
Onondaga Supreme Court	621
Erie Supreme Court	361

Figure 8
CIVIL COURTS OF LIMITED JURISDICTION
Filings and Dispositions
1982

Civil Court of the City of New York

Housing Part		General Calendar	
Summary Proceedings Calendared*	122,846	Received	39,796
Summary Proceedings Disposed	123,725	Disposed	38,456
Other Actions and Proceedings Filed	8,105	Small Claims	
Other Actions and Proceedings Disposed	8,779	Received	62,218
		Disposed	67,616
*An additional 271,570 petitions were filed in which no answer was received.			

City and District Courts Outside New York City

General Calendar	
Filed	55,889
Disposed	58,239

Small Claims	
Filed	48,297
Disposed	47,768

Court of Claims	
Filed	1,421
Disposed	1,431

County Courts	
Filed	2,887
Disposed	3,873

2.4 Family Courts

There were nearly 700,000 calendared appearances (698,278) in the Family Courts of New York State during 1982. Forty-one percent of these (289,799) were in New York City, the remainder (409,479) in the courts outside New York City.

New filings of all types in the Family Courts statewide totaled 333,104 during 1982. Of these 98,525 (30%) were filed in the New York City Family Court. The remaining 237,579 (70%) were filed outside New York City.

Dispositions statewide totaled 310,325, with 92,380 (30%) in New York City and 217,945 (70%) outside New York City.

New York State law requires the Chief Administrator of the Courts to report to the state Legislature highly detailed statistics regarding the nature and outcome of petitions for juvenile delinquency, persons in need of supervision, child protective proceedings, and family offense proceedings. Because of the great volume and complexity of these statistics, they are shown in an appendix to this report.

2.5 Surrogates' Courts

Table 15 shows statewide Surrogates' Court activity for 1982.

Table 15
SURROGATES' COURTS ACTIVITY STATEWIDE
1982

A. Number of Proceedings By Department	Petitions Filed	Citations (Return- Able)	Motions Ord. to Show Cause Filed	Guard Ad Litem App'd	Answers Objecti- ons Filed	Bonds		Trial Notes of Issue Filed	Orders Signed	Decrees Signed	Letters Issued	Misc.
						Filed	Dis- pensed With					
1. Probate	39,492	11,244	763	3,401	563	915	5,037	162	16,065	37,029	39,790	8,873 (1.
2. Administration	13,568	1,723	126	230	141	3,679	6,412	31	2,442	11,528	12,414	3,350 (2.
3. Accountings	6,788											(3.
3A. Informal Accts.	(8,475)	6,037	498	2,277	811	307	179	83	5,526	6,238		19,142 (A.
4. Miscellaneous	7,851	1,904	1,010	551	453	513	398	63	6,899	2,171		878 (4.
5. Guardianship	13,502	848	42	405	19	140	1,769	72	7,522	6,903	6,855	349 (5.
6. Adootion	3,209	914	95	399	39			4	4,696		2,094	493 (6.
7. Estate Tax	19,487		499		19			4	19,298			1,138 (7.
8. Total (1-7)	112,372	22,670	3,033	7,263	2,045	5,554	13,795	419	62,448	63,869	61,153	34,223 (8.
B. Surrogate and Law Department:												
8A. Number of Hearings Commenced by Surrogate											6,929 (8A.	
B. Number of Trials Commenced by Surrogate											2,087 (8B.	
9A. Number of Conferences and Hearings											41,998 (9A.	
B. Number of Conferences on Legal Matters Commenced by Chief Clerk and Deputy Chief Clerk											21,771 (9B.	
10. Number of Examinations Held											4,270 (10.	
11. Number of Written Decisions											15,188 (11.	
12. Number of Opinions and Memoranda Issued											11,882 (12.	
C. Small Estates:												
13. Number of Affidavits Filed											12,258 (13.	
14. Number of Answers/Objections Filed											1,242 (14.	
15. Number of Accountings Filed											3,666 (15.	
D. Other:												
16. Number of Certificates Issued											483,966 (16.	
17. Number of Annual Guardianship Accountings											14,979 (17.	
18. Number of Wills Filed for Safekeeping											11,762 (18.	
19. Number of Files Requisitioned											359,778 (19.	
20. Number of Pages Certified											155,340 (20.	
21. Number of Exemplifications											2,830 (21.	
22. Number of Searches Completed											4,963 (22.	
23. Number of Witnesses Examined by Clerk											7,872 (23.	

2.6 Appellate Courts

Tables 16 - 18 show 1982 activity in the Appellate Courts (excluding county courts acting as appellate courts, for which statistics were not available).

2.7 Standards and Goals

Since 1975, the Standards and Goals of the Chief Administrator of the Court have provided performance measures for the courts with respect to elapsed time to disposition for felony cases in the Supreme and County Courts, civil cases in the Supreme Courts, and for fact-finding and dispositional hearings in the Family Courts.¹⁰

Felony Cases: The applicable Standard is disposition within six terms of court (1 term = 4 weeks) from the filing of an indictment, excluding periods when a case is not within the active management control of the court (warrant outstanding, etc.).

During 1982, 76 percent of felony case dispositions statewide were achieved within the six-term standard. At the end of 1982, 31 percent of the 20,810 felony cases pending statewide were older than six terms since indictment. At the end of the previous year, 33 percent were so pending.

Civil Cases: The Standard is disposition within fifteen terms of the filing of a Note of Issue. During 1982, 78 percent of civil case dispositions statewide were achieved within this Standard. At the end of 1982, 23 percent of the 56,638 civil cases pending in the Supreme Court statewide were older than fifteen terms since the filing of the Note of Issue--the same as at the end of 1981.

Family Court: The Standard is completion of fact-finding within ninety days of the commencement of a proceeding, excluding periods when a case is not within the active management control of the court (warrant outstanding, etc.). During 1982, 93 percent of all fact-findings were completed within this time period.

¹⁰See "Standards and Goals" memorandum of the Chief Administrator of the Courts of 2/28/79, containing revisions approved by the Administrative Board of the Courts on 1/25/79 to the original 1975 Standards and Goals.

Table 16
CASELOAD ACTIVITY IN THE COURT OF APPEALS
1982

Applications Decided | C.P.L. 460.20 (3-b)	1,863
Records on Appeal Filed	734
Motions Decided	1,289
Oral Arguments	711
Appeals Decided	722

All Cases						
Basis of Jurisdiction	Type of Disposition					Total
	Affir- mance	Re- versal	Modifi- cation	Dis- missal	Other	
Reversal, Modification, Dissent in Appellate Division	315	78	19	5	...	417
Permission of Court of Appeals or Judge thereof	97	58	7	3	...	165
Permission of Appellate Division or Justice thereof	58	37	9	5	...	109
Constitutional question	5	2	1	1	...	9
Stipulation for judgment absolute	...	...	...	...	...	...
Other	14	6	1	1	...	22
Total	489	181	37	15	...	722

Civil Cases						
Basis of Jurisdiction	Type of Disposition					Total
	Affir- mance	Re- versal	Modifi- cation	Dis- missal	Other	
Reversal, Modification, Dissent in Appellate Division	315	78	19	5	...	417
Permission of Court of Appeals or Judge thereof	23	29	4	1	...	57
Permission of Appellate Division or Justice thereof	31	26	9	1	...	67
Constitutional question	5	2	1	1	...	9
Stipulation for judgment absolute	...	...	...	...	...	...
Other	12	6	1	1	...	20
Total	386	141	34	9	...	570

Criminal Cases						
Basis of Jurisdiction	Type of Disposition					Total
	Affir- mance	Re- versal	Modifi- cation	Dis- missal	Other	
Reversal, Modification, Dissent in Appellate Division	...	...	...	...	...	...
Permission of Court of Appeals or Judge thereof	74	29	3	2	...	108
Permission of Appellate Division or Justice thereof	27	11	...	4	...	42
Constitutional question	...	...	...	...	...	...
Stipulation for judgment absolute	...	...	...	...	...	...
Other	2	...	...	...	...	2
Total	103	40	3	6	...	152

Table 17
CASELOAD ACTIVITY FOR APPELLATE DIVISIONS
OF THE SUPREME COURT
1982

Department	Records on Appeal Filed	Motions Decided	Oral Arguments	Dispositions of Judgments or Orders Appealed from ¹	Admissions To Bar		Attorney Disciplinary Proceedings					
					Men	Women	Charges Dismissed	Censures	Suspensions	Struck from Roll	Disbarments	Reinstatements
1st Dept.	3,288	7,197	1,199	3,397	1,088	713	1	3	25	9	6	3
2nd Dept.	3,329	10,064	1,540	3,433	1,429	652	4	11	13	5	23	7
3rd Dept.	1,627	3,686	1,047	1,723	786	217	1	4	10	2	1	2
4th Dept.	1,221	2,509	940	1,228	282	115	0	2	2	1	3	2
State Total	9,465	23,456	4,726	9,781	3,585	1,697	6	20	50	17	33	14

¹Includes Articles 78 and original proceedings; also includes appeals dismissed or withdrawn before arguments or submission.

Table 18
CASELOAD ACTIVITY FOR APPELLATE TERMS
OF THE SUPREME COURT
1982

Activity	First Department	Second Department*	Total
1. Total Appeals received	669	1838	2507
a. County Courts	0	40	40
b. The Civil Court of the City of New York	506	439	945
c. The Criminal Court of the City of New York	86	212	298
d. The District Courts	0	619	619
e. Courts in Cities Outside New York City	0	163	163
f. Town Courts & Village Courts	0	365	365
2. Motions heard or submitted	1765	3399	5164
3. Total appeals disposed of	615	1194	1809
a. Discontinued	24	13	37
b. Dismissed on calendar call under Rule 3 or 8 (civil)	36	388	424
c. Dismissed on calendar call under C.P.L. 460.70 (criminal)	2	43	45
d. Remitted	3	1	4
e. Decided after argument or submission	550	750	1300
4. Total decisions rendered	550	750	1300
a. Dismissed, discontinued, withdrawn or remanded	35	22	57
b. Affirmed	268	379	647
c. Modified	54	94	148
d. Reversed	193	255	448
5. Opinions filed	14	0	14
6. Per curiam opinions	432	728	1160
7. Memoranda written, not filed	118	0	118

*Data shows total of caseload activity in both Appellate Terms of the Second Department.

Education And Training Programs

Since 1962, over 26,200 judges and justices of New York State have attended seminars and training programs conducted by the Office of Court Administration through its Education and Training Office. In 1982, 1,827 judges, including 1,139 town and village justices, attended OCA-sponsored judicial programs. In addition, 25 judges attended national programs outside the State. In the area of nonjudicial training, more than 1250 persons attended programs sponsored or financed by OCA.

3.1 Judicial Programs For State-Paid Judges

3.1.1 1982 Judicial Seminars

*August 2-6, 1982
August 9-13, 1982
Buffalo, New York*

At the direction of Chief Judge Lawrence H. Cooke, a major advancement in judicial education in New York State was initiated in 1982. The practice in previous years had been to hold one or more separate seminars for courts of similar jurisdictions. Thus, in 1981, fifteen separate seminars were held for sitting State-paid trial judges. In 1982, these seminars were consolidated into a week-long session held at the Law School at the University of Buffalo during the first week of August and repeated the following week. Approximately 300 judges and justices attended each week.

In planning for these sessions, six Curriculum Development Committees were appointed by Chief Judge Cooke. The Committees met to determine course content and recommend faculty in six areas of subject matter: evidence; civil law and procedure; criminal law and procedure; family law and procedure; Surrogates' matters; and judicial skills. With the exception of four representatives from the academic world, the Committees were made up entirely of State judges.

The Committees devised a program of 37 courses which were offered during the sessions. At any one time, the attending judges could select from any of the six to nine half-day courses conducted during each seminar period. This proved to be one of the most popular aspects of the consolidation - judges could take courses which might well not have been available to them under the previous practice of separate seminars for particular levels of courts.

Another popular aspect was the bringing together of judges from all levels and jurisdictions of trial courts,

other than Town and Village Courts, in the Unified Court System. The attending judges had an opportunity to discuss experiences and viewpoints during the week with judges from other jurisdictions whom they would not otherwise be likely to meet.

The faculty for these seminars was largely made up of judges from New York who accepted the task of developing their topics and planning their courses and presentations as an addition to their normal judicial duties. In addition to the judicial members of the faculty, law professors, former judges, practicing lawyers, and professionals from other disciplines added their talents to the faculty.

A total of 611 judges and justices attended one of the week-long sessions. The following listings for the 1982 Judicial Seminars include Curriculum Development Committees, Schedule of Seminars, and Faculty.

3.1.1.2 CURRICULUM DEVELOPMENT COMMITTEES

CIVIL LAW AND PROCEDURE

Honorable Frank X. Altimari
Honorable Maxine K. Duberstein
Honorable William L. Ford
Honorable Edward J. Greenfield
Honorable Robert A. Harlem
Honorable Irving Kirschenbaum
Honorable Harold E. Koreman
Honorable John C. Marbach
Professor David D. Siegel
Honorable Andrew Tyler
Honorable William A. Walsh, Jr.
Honorable Robert E. White

EVIDENCE

Honorable Arnold G. Fraiman
Honorable Ira Gammernan
Professor Emeritus Milton Gershenson
Honorable Theodore S. Kasler
Honorable J. Robert Lynch
Honorable William McCooe
Honorable John A. Monteleone
Dean Emeritus Jerome Prince
Honorable Leonard H. Sandler
Honorable Samuel Silverman
Honorable Andrew V. Siracuse
Honorable Thomas Stark

JUDICIAL SKILLS

Honorable J. Raymond Amyot
Honorable George Cobb
Honorable Dennis Edwards, Jr.
Honorable David T. Gibbons
Honorable Nat Hentel
Honorable Abraham Isseks
Honorable Sybil Hart Kooper
Honorable Richard F. Kuhnen
Honorable Leon Lazer
Honorable William Ostrowski
Honorable Seymour Schwartz
Honorable Lyman H. Smith
Honorable Richard W. Wallach

CRIMINAL LAW AND PROCEDURE

Honorable Joseph W. Bellacosa
Honorable Alain M. Bourgeois
Honorable Samuel L. Green
Honorable Joseph Harris
Honorable Angelo Ingrassia
Honorable Michael Juviler
Honorable Robert P. Kennedy
Honorable Lorraine S. Miller
Honorable Burton Roberts
Honorable Ernst H. Rosenberger
Honorable Marie G. Santagata
Honorable Stephen Smyk
Honorable Alexander Vitale

FAMILY LAW AND PROCEDURE

Honorable Arthur J. Abrams
Honorable Patricia D. Collins
Honorable Donald J. Corbett, Jr.
Honorable William J. Dempsey
Honorable Leon Deutsch
Honorable Mary Ann Killeen
Honorable Edward J. McLaughlin
Honorable M. Holt Meyer
Honorable Edith L. Miller
Honorable Michael V. Tepedino
Honorable Jack Turret
Honorable Alfred J. Weiner
Honorable Ruth Jane Zuckerman

SURROGATES' MATTERS

Professor Joseph T. Arenson
(Faculty Coordinator)
Honorable Willard W. Cass, Jr.
Honorable Bertram R. Gelfand
Honorable Irving Goldman
Honorable Irving A. Green
Honorable Edward M. Horey
Honorable Louis D. Laurino
Honorable C. Raymond Radigan
Honorable Bernard L. Reagan

3.1.1.3 SEMINAR TOPICS

The Nature of Hearsay and Selected Exceptions to the Hearsay Rule

The Suppression Remedy -- Part I (Emphasizing the Fourth Amendment)

Psychiatric Defenses in Criminal Cases

Equitable Distribution for Judges Regularly Sitting in Matrimonial Parts

Matrimonial Law: Custody, Visitation, and Permanent Termination of Parental Rights

Equitable Distribution and the Right of Election

Preserving the Record: Appellate Judges' Views of Trial Records

Opinion Writing

Impeachment of Witnesses

Criminal Trial Problems

The Trial of Medical and Professional Malpractice Cases

Developments in the Law of Torts

Support Orders and Decrees: Enforcement and Modification

Adoption Proceedings

Preparing the Charge to the Jury - Civil and Criminal Trials

The Nature of Hearsay and Selected Exceptions to the Hearsay Rule

Expert Testimony

The Suppression Remedy -- Part II (Emphasizing the Fifth and Sixth Amendments)

Equitable Distribution for Judges not Sitting in Matrimonial Parts

The Trial of a Products Liability Case

Family Court Case Law and Legislative Review

Techniques of Conducting a Trial

Selected Problems in Evidence in Civil Cases

Criminal Law and Procedure for Judges Experienced in Civil Matters

Psychiatric Defenses in Criminal Cases

Problems in Criminal Law in Local Criminal Courts

Selected Problems in Civil Procedure

Real Property Issues: Valuation, Cooperatives, and Condominiums

Child Custody Under the Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act of 1980

New Legislation and Recent Decisions Affecting Surrogates' Courts and Estate Planning for Judges and Compromise of Personal Injury and Wrongful Death Actions: Distribution of Proceeds of Said Actions

Practical Trial Problems Involving Women in the Courtroom

Judges' Conduct In and Out of the Courtroom

Selected Problems in Evidence in Criminal Cases

Developments in the Last Year in Criminal Law and Procedure

Summary Proceedings and Small Claims

The Management, Disposition, and Taxability of Condominiums, Cooperatives and Foreign Real Estate

Opinion Writing

Judicial Stress

3.1.1.4 Faculty

Honorable Morris Aarons
Former Surrogate
New York County

Honorable Fritz W. Alexander II
Justice, Supreme Court
First Judicial District

Honorable Frank X. Altimari
Administrative Judge
Nassau County

Honorable Herbert I. Altman
Acting Justice, Supreme Court
First Judicial District

Honorable Myriam J. Altman
Acting Justice, Supreme Court
First Judicial District

Professor Joesph T. Arenson
New York Law School

Honorable Raymond C. Baratta
Former Surrogate
Dutchess County

Associate Dean Robert A. Barker
Albany Law School

Honorable Francis X. Becker
Justice, Supreme Court
Tenth Judicial District

Honorable John D. Bennett
Former Surrogate
Nassau County

Honorable Frederic S. Berman
Acting Justice, Supreme Court
First Judicial District

Honorable David O. Boehm
Justice, Supreme Court
Seventh Judicial District

Honorable Seymour Boyers
Associate Justice
Appellate Division, Second Department

Peter E. Bronstein, Esq.
Bronstein, Vanveen & Bronstein
New York City

Honorable John T. Casey
Associate Justice
Appellate Division, Third Department

Honorable Beverly S. Cohen
Judge of the Civil Court
New York City

Honorable Raymond E. Cornelius
Judge of the Family Court
Monroe County

Willard H. DaSilva, Esq.
Garden City, New York

Honorable Peggy C. Davis
Judge of the Family Court
New York City

Honorable Dolores M. Denman
Associate Justice
Appellate Division, Fourth Department

Honorable Robert W. Doyle
Justice, Supreme Court
Tenth Judicial District

Honorable Vincent E. Doyle
Justice, Supreme Court
Eighth Judicial District

Honorable Maxine K. Duberstein
Justice, Supreme Court
Second Judicial District

Richard G. Dudley, Jr., M.D.
Assistant Professor
of Clinical Psychiatry
Department of Psychiatry
New York Medical College

Honorable Michael W. Duskas
Judge of the County Court
St. Lawrence County

Honorable Geraldine T. Eiber
Justice, Supreme Court
Eleventh Judicial District

Herald Price Fahringer, Esq.
Lipsitz, Green, Fahringer, Roll, Schuller
& James
New York City

Honorable Harold J. Fertig
Judge of the District Court
Nassau County

Honorable Arnold Guy Fraiman
Justice, Supreme Court
First Judicial District

Honorable Helen Freedman
Judge of the Civil Court
New York City

Honorable Marilyn R. Friedenberg
Judge of the Family Court
Nassau County

Honorable Betty D. Friedlander
Judge, County, Family and Surrogate's Courts
Tompkins County

Honorable Ira Gammerman
Judge of the Civil Court
New York City

Honorable Bertram R. Gelfand
Surrogate
Bronx County

Milton Gershenson
Professor Emeritus
Brooklyn Law School

Honorable David T. Gibbons
Associate Justice
Appellate Division
Second Department

Honorable James A. Gowan
Justice, Supreme Court
Tenth Judicial District

Honorable Charles F. Graney
Judge of the Family Court
Genesee County

Honorable Edward J. Greenfield
Justice, Supreme Court
First Judicial District

Honorable Stewart F. Hancock, Jr.
Associate Justice
Appellate Division
Fourth Department

Honorable Nat H. Hentel
Judge of the Civil Court
New York City

Michael J. Hutter, Jr.
Professor
Albany Law School

Honorable Angelo J. Ingrassia
Judge of the County Court
Orange County

Kenneth Joyce
Professor
Buffalo Law School at S.U.N.Y.

Honorable Theodore S. Kasler
Supervising Justice, Criminal Division
Eighth Judicial District

Honorable Edwin Kassoff
Justice, Supreme Court
Eleventh Judicial District

Honorable Robert P. Kennedy
Supervising Justice
Seventh Judicial District

Fred Klein, Esq.
Assistant District Attorney
Nassau County

Honorable Sybil Hart Kooper
Justice, Supreme Court
Second Judicial District

Honorable Theodore R. Kapferman
Associate Justice, Appellate Division
First Department

Honorable Marie M. Lambert
Surrogate
New York City

Honorable Irving Lang
Judge of the Criminal Court
New York City

Honorable Louis D. Laurino
Surrogate
Queens County

Honorable Leon D. Lazer
Associate Justice, Appellate Division
Second Department

Honorable Howard E. Levitt
Justice, Supreme Court
Tenth Judicial District

Jack T. Litman, Esq.
Litman, Friedman, Kaufman & Asche
New York City

Honorable John S. Lockman
Justice, Supreme Court
Tenth Judicial District

Martin Lubin, M.D.
Director of Psychiatrics
Booth Memorial Medical Center
Flushing, New York

Honorable John C. Marbach
Justice, Supreme Court
Ninth Judicial District

Honorable Arthur Markewich
Senior Justice, Appellate Division
First Department

Honorable Frederick M. Marshall
Justice, Supreme Court
Eighth Judicial District

Honorable Joseph P. McCarthy
Judge of the County Court
Erie County

Honorable William P. McCooe
Justice, Supreme Court
First Judicial District

Honorable Leo F. McGinity
Justice, Supreme Court
Tenth Judicial District

Honorable Mario Merola
District Attorney
Bronx County

Honorable M. Holt Meyer
Judge of the Family Court
New York City

Honorable Ann T. Mikoll
Associate Justice
Appellate Division
Third Department

Honorable Lorraine S. Miller
Judge of the Civil Court
New York City

Honorable Patrick D. Monserrate
Judge of the County Court
Broome County

Honorable John A. Monteleone
Justice, Supreme Court
Second Judicial District

Eugene J. Morris, Esq.
Demov, Morris, Levin & Shein
New York City

Professor Peter J. O'Connor
Fordham Law School

Raymond J. Pauley, Esq.
Rochester, N.Y.

Professor Peter Preiser
Albany Law School

Dean Emeritus Jerome Prince
Brooklyn Law School

Honorable C. Raymond Radigan
Surrogate
Nassau County

Honorable William J. Regan
Former Surrogate
Erie County

Dean Patrick J. Rohan
St. John's Law School

Honorable Ernst H. Rosenberger
Justice, Supreme Court
First Judicial District

Honorable Albert M. Rosenblatt
Justice, Supreme Court
Ninth Judicial District

Eugene W. Salisbury, Esq.
Lipsitz, Green, Fahringer, Roll,
Schuller & James
Buffalo

Honorable Marie G. Santagata
Judge of the County Court
Nassau County

Honorable Gerald Saperstein
Former Surrogate
Cayuga County

Lynn Hecht Schafran, Esq.
Director, National Judicial
Education Program to Promote
Equality for Women & Men in the
Courts
New York City

Honorable Alvin Schlesinger
Justice, Supreme Court
First Judicial District

Professor David D. Siegel
Albany Law School

Honorable Andrew V. Siracuse
Justice, Supreme Court
Seventh Judicial District

Honorable Stanley L. Sklar
Acting Justice, Supreme Court
First Judicial District

Honorable Morrie Slifkin
Justice, Supreme Court
Ninth Judicial District
Justice, Appellate Term
Ninth & Tenth Judicial Districts

Honorable Arthur D. Spatt
Justice, Supreme Court
Tenth Judicial District

Honorable Thomas M. Stark
Justice, Supreme Court
Tenth Judicial District
Supervising Judge of the Criminal Courts
Suffolk County

Honorable James G. Starkey
Acting Justice, Supreme Court
Second Judicial District

Honorable Donald J. Sullivan
Justice, Supreme Court
First Judicial District

Honorable William C. Thompson
Associate Justice
Appellate Division, Second Department

Honorable Jack Turret
Judge of the Family Court
New York City

Honorable Alexander Vitale
Judge of the County Court
Nassau County

Honorable Richard W. Wallach
Justice, Supreme Court
First Judicial District

Honorable Alfred J. Weiner
Judge of the Family Court
Rockland County

Honorable Robert C. Williams
Justice, Supreme Court
Third Judicial District

Bernard E. Witkin, Esq.
Berkeley, California

Isaiah Morris Zimmerman, Ph. D.
George Washington University and
School of Medicine
Director, Norther Virginia Psychotherapy Center
Washington, D.C.

Honorable Ruth Jane Zuckerman
Judge of the Family Court
New York City

3.1.2 Orientation Seminar for New Judges

*December 6-10, 1982
New York City*

The annual Orientation Program for Newly-Elected and Newly-Appointed Judges was held on December 6 to 10, 1982 in New York City. This week-long program consisted of lectures on evidence, the trial judge's role, the New York State Employees Retirement System, criminal procedure, the Bench Book for Trial Judges, civil law and procedure, the administration of jurors, the role of the court reporter, inter-court relations and administrative structure, substantive criminal law, pattern jury instructions, judicial conduct, the conduct of a civil trial, and courts and the community and public perceptions. Seventy-seven judges attended.

3.1.3 Other Judicial Programs

In addition to the programs described above, various courts, districts, and judicial departments conducted educational sessions for their sitting judges and orientation programs for their new judges in 1982.

3.2 Town and Village Justice Training Programs

There are approximately 2400 town and village justice positions in New York State. Because of vacancies and because some judges hold more than one position, approximately 2,100 individuals hold the office of town or village justice. Roughly eighty percent of these are not admitted to practice law in the State. New justices who are not attorneys are required to successfully complete a six-day Basic Certification Course covering the fundamentals of law and their responsibilities as judges. The Basic Course was presented once in Canton and twice each in Albany, Syracuse, and Buffalo in 1982. A total of 128 judges attended. After completion of the Basic Course, and upon each succeeding new term of office, a non-

attorney justice must complete a two-day Advanced Certification Course which covers selected legal topics in greater depth. The nine Advanced Courses presented in 1982 were held in New York City, Utica, Olean, Canton, New Paltz, Ellenville, Cortland and Plattsburgh. A total of 1011 judges attended.

The Office of Court Administration is particularly grateful to the Honorable Eugene W. Salisbury, the Honorable Duncan S. MacAffer, and John J. Elliott, Esq., who served as the senior faculty for the certification programs, coordinated the Basic Certification Courses, and provided invaluable consultation for the program planning and delivery.

In addition, the Office of Court Administration thanks the following people for their participation in the Justice Training Program:

Michael J. Brown, Esq.
Honorable Helen Burnham
Paul J. Cambria, Jr., Esq.
Stephen R. Coffey, Esq.
Malcolm Coutant, Esq.
Mr. David Egelston
Professor Maurice Frey
Peter Gerstenzang, Esq.
Mr. William Green
Honorable Herman Harding
Frank S. Kedzielawa, Esq.
Salvatore Martoche, Esq.
Honorable Vincent J. Massarelli
David F. Mix, Esq.
Honorable Kevin Moss
Richard Pearson, Esq.
Mr. David S. Rockefeller
Larry J. Rosen, Esq.
Edward Rowley, Esq.
Mr. Joseph Sarno
Neal Schoen, Esq.
Louise Tucker, Esq.
Mr. William Williford
Honorable Richard Wittenburg

3.3 Nonjudicial Programs

Family Court Clerks Annual Seminar

June 1-4, 1982

This seminar brought 70 Clerks of the Family Court to Buffalo to participate in presentations on a wide variety of topics related to their work in the courts. The first day's subjects included: "Back-Office Workload Measures," "Revised Family Court Forms," and "Reviewing Employee Performance." The second day featured: "Brain Dominance Patterns and Personal Communications," "The Family Court Clerks' Manual," "Personnel Matters," "Budget Preparation Procedures," "Modernization and Administration of the Family Courts," and "Records Retention and Destruction." The last day included the "ask any question" forum that has always been a highlight of this annual seminar, since so much expertise is shared.

Commissioners of Jurors Annual Seminar

November 17-19, 1982

Forty-four participants witnessed the debut of the new juror orientation film: "Trial by Jury: A Partnership for Justice," which was subsequently released for use throughout the State. The Commissioners held a forum discussion on the merits of the film and how to best use it. A presentation was then made on the characteristics of good movie projectors and how to specify projector requirements for various types of showing areas.

Other major topics at this seminar were: "Jury Management in Selected New York Courts," "Update on Jury Automation," and, "Dealing With the Public: Three Current Theories."

Chief Clerks of Surrogate's Courts Annual Seminar

September 22-24, 1982

Fifty-four participants assembled in Binghamton for this seminar. The lead topic was an afternoon seminar called: "A Roundtable Discussion Pertaining To Questions Confronting Chief Clerks About Administration, Probate, Guardians and Accounting." On the following day fee schedules were discussed and a position paper adopted. A presentation was then made on the "Employee Benefit Programs" available from the Education and Training Unit. A representative of the New York State Employees' Retirement System told what members should do to maximize their options and benefits.

"Body Language: The Other Half of Effective Communication" was delivered in an interactive learning program, following which the new travel voucher procedures were explained.

Surrogate's Law Association Annual Seminar

June 16-18, 1982

Monticello, New York was the site of this seminar dedicated to the study and discussion of new case law in the Surrogate's Courts. Unlike the seminars for Chief Clerks, at which a wide variety of topics are discussed, this seminar focuses only on matters of law. The presentations and discussions related to a long list of legal matters which made up the agenda for this seminar. In addition to presentations and discussions led by group members, a present and a former Surrogate presented particular topics. Fifty-seven attendees participated in the 1982 seminar.

Law Librarians Annual Seminar

October 7-10, 1982

More than two dozen law librarians attended their first OCA sponsored Annual Seminar in Liberty. At the request of the first Chief Law Librarian appointed to that newly created position, court employees planning

to attend a law librarians' seminar already offered by two professional groups added a day to that seminar just for court related matters. They attended a special session on microfilming and indexing microfilm and microfiche and another special session on how to form a committee among OCA employed Law Librarians so that they could plan their own annual seminar in 1983.

An education committee was formed to work with the Chief Law Librarian to plan an independent major seminar in 1983 and to contact all law librarians who would be entitled to attend.

Supreme and County Court Clerks Annual Seminar

July 19-22, 1982

This group's twenty-fourth annual seminar was conducted in Kiamesha Lake, New York, and featured the theme: "Honoring Past Presidents." Seventy-three court employees participated in this seminar.

Besides the popular "Annual Forum," where any and every type of question may be raised and discussed, there were a host of topics presented. These included: new budget and voucher preparation procedures related thereto, arbitration and small claims assessment review, legislative update, a review of the procedures manual after one year of use, Board of Elections notifications of felony imprisonments, and how to use the new travel vouchers.

A special workshop on whole-brained communications was also conducted, and committees were established to make the Silver Jubilee seminar in 1983 a very special event.

City and District Court Clerks Annual Seminar

September 12-15, 1982

There were ninety-nine participants in this seminar conducted at Lake Placid.

The Chief Clerks (and certain key deputy clerks) from the City Courts outside the City of New York, the District Courts on Long Island and the Police and Recorder Courts heard presentations on topics affecting the operations of their courts and their effectiveness as clerks. Presentations related to court operations included Voucher Procedures; Purchasing Procedures; Microfilming, the "One-Write" Accounting System; Seal and Return Orders, the Traffic Safety Law Enforcement Program (T/SLED) and Court System Organization. A report on the ongoing procedures manual project was also presented.

Management effectiveness was addressed with "Brain Dominance: A New Approach to Communications" and "Professionalism in the City Courts." A representative of the New York State Employees Retirement System also made a presentation to the clerks.

Employee Benefit Programs

A record number of Employee Benefit Programs were presented in 1982. District Administrative Judges were able to select from among nineteen workshops offered by the Education and Training Unit. Custom workshops were also available. Some 860 court employees attended the workshops offered during the year.

The workshops were presented as follows:

			Attendance
Advanced Management Concepts	Sept. 27	Rochester	10
	Oct. 13	Cortland	18
Career Planning	May 27	Rochester	14
	Sept. 29	Rochester	9
Court System Structure	Sept. 27	Canandaigua	10
	Oct. 25	Rochester	22
Dealing With the Public	Jan. 21	Albany	18
	May 4	Buffalo	43
	May 7	Buffalo	45
	June 7	Canandaigua	18
	Oct. 28	Riverhead	13
	Oct. 29	Hauppauge	30
Face-to-Face Communications	June 23	Rochester	12
	Oct. 26	Rochester	10
How to Take a Written Exam	May 4	Buffalo	57
	May 7	Buffalo	49
	June 23	Rochester	16
	Sept. 27	Canandaigua	16
	Sept. 28	Rochester	21
	Nov. 12	Riverhead	34
Office File Organization	May 26	Rochester	16
	Nov. 17	Canandaigua	14
Personal Stress Management	May 6	Buffalo	19
	May 7	Buffalo	46
	May 26	Rochester	22
Principles of Supervision	May 4	Buffalo	46
	May 5	Buffalo	21
	June 22	Rochester	8
	Oct. 26	Rochester	10
Retirement System	Oct. 25	Rochester	46
Running Meetings and Conferences	Nov. 16	Rochester	17
Security Planning	June 22	Rochester	12
Time and Crisis Management	May 5	Buffalo	17
	May 6	Buffalo	16
	May 27	Rochester	31
	Sept. 29	Rochester	12
	Dec. 1	Albany	18
Telephone Techniques	Oct. 25	Rochester	15
Training and Coaching Employees	Oct. 15	Riverhead	9

All of these workshops were designed by Raymond F. Crapo of the Education and Training Office. After September 1, 1982, he was assisted by Francis J. Carroll, Jr. of the Criminal Branch, Supreme Court, New York County, who presented many of them and designed the workshop on Court System Structure. The Retirement System workshop was conducted by the Education and Training Coordinator using a member of the New York State Employee's Retirement System Speaker's Bureau to present the subject matter.

These workshops are not lectures. Rather, they employ the latest state-of-the-art training and development techniques for interactive adult learning. Workshop participants employ workbooks, role plays, small group discussions, readings, and audio-visual presentations on the Employee Benefit Programs. The workshops are designed to benefit the courts by enhancing the knowledge, attitudes, personal skills, and work habits of the individuals comprising the support staff of the Unified Court System.

3.4 OTHER PROGRAMS

3.4.1 Judicial Programs

National Programs

The Education and Training Office sponsors and coordinates selective attendance of judicial and non-judicial personnel at nationally recognized educational programs.

Thirteen judges attended programs varying in length from one to four weeks at the National Judicial College facilities at the University of Nevada in Reno. One judge attended the Annual Conference of the National Council of Juvenile Court Judges. Another attended the Conference of the Council of Chief Judges of Courts of Appeal, and two attended the American Bar Association's Appellate Judges' Seminars.

New York was represented by four judges at the American Bar Association's Conference of State Trial Judges and by the same number of judges at the Association's Conference of Special Court Judges.

Institute for Trial Judges

The Education and Training Office provided administrative services and funding for two series of lectures established by the Institute for Trial Judges at Hunter College. The lectures are intended to provide an interdisciplinary forum stressing issues of the social sciences as they impact upon trial judges.

3.4.2 Participation in Other Programs

Members of the Education and Training Office shared experiences and ideas with their counterparts in other organizations during 1982. They participated in several intergovernmental programs, including programs of the National Association of State Judicial Educators, the State Highway Trainers Conference, and the New York State Training Council.

Legislation and Rule Revision

LEGISLATION

The Office of Counsel is the principal representative of the Unified Court System in the legislative process. It is responsible for developing the Judiciary's legislative program and for providing the legislative and executive branches with analyses and recommendations concerning pending measures which may have an impact upon the operations of the courts and the judicial process. It also serves a liaison function with bar association committees, judicial associations and other groups, public and private, with respect to changes in court-related statutory law.

Deputy Counsel staff the Chief Administrator's advisory committees on civil practice, criminal procedure and family law. These committees formulate legislative proposals in their respective areas of concern and expertise for submission to the Chief Administrator. When approved by the Chief Administrator, they are transmitted to the Legislature, in bill form, for sponsors and legislative consideration.

Each advisory committee also analyzes other legislative proposals during the legislative session. Recommendations are submitted to the Chief Administrator, who, through his Counsel, communicates with the Legislature and the Executive on such matters in the form of legislative memoranda and letters to Governor's Counsel.

Counsel's Office also is responsible for drafting legislative measures required by the administrative office for the courts, including budget requests, adjustments in judicial compensation and measures to implement collective bargaining agreements negotiated with court employee unions pursuant to the Taylor Law. Likewise, Counsel's Office furnishes the Legislature and Executive analyses and recommendations on other legislative measures having impact on the administrative operation of the courts.

In the discharge of its legislation-related duties, Counsel's Office consults frequently with individual legislators, the professional staffs of legislative committees and the Governor's Counsel in support of the Judiciary's legislative program and to provide technical assistance in the development of court-related proposals initiated by the executive and legislative branches.

The following measures, introduced in the Legislature at the request of the Office of Court Administration, were enacted into law at the 205th session of the State Legislature:

Chapter 20 (Senate bill 2243). Amends CPLR 2103 to provide that where a period of time in which to respond is measured from service of paper, and service is by mail, five, instead of three, days are to be added to the period of time afforded. Eff. 1/1/83.

Chapter 117 (Senate bill 5223-B). Amends §1055 of the Family Court Act to require that a petition to extend placement in a neglect or child abuse case be filed at least 60 days prior to the expiration of placement. Eff. 9/1/82.

Chapter 214 (Senate bill 9240). Amends §710.20 of the Criminal Procedure Law to authorize pre-trial suppression of a defendant's involuntary statement made to a person other than a public servant engaged in law enforcement activity. Eff. 9/1/82.

Chapter 353 (Senate bill 10113). Amends the Judiciary Law and Chapters 539 and 543 of 1980 to enact provisions implementing agreements between the Unified Court System and the following employee organizations: New York State Court Employees Association, Rockland County, Westchester County, State Judiciary, Third Judicial District, Fourth Judicial District, Fifth Judicial District, Sixth Judicial District, Seventh Judicial District, Eighth Judicial District, Orange County, Dutchess County, Putnam County, City of Peekskill, City of White Plains, City of New Rochelle, City of Mount Vernon, City of Port Jervis, City of Newburgh, City of Middletown, City of Poughkeepsie, City of Glen Cove, City of Long Beach, City of Buffalo, City of Rochester, Allegany County, City of Yonkers, New York City court reporters, Nassau County, Suffolk County, New York City senior law assistants and New York City bookbinders and identification officers. Eff. 6/21/82 but deemed effective from 4/1/81, except for §§7, 8, 17, 18 which are deemed effective 4/1/82.

Chapter 379 (Senate bill 7858-A). Amends §§1022 and 1024 of the Family Court Act to require written notice to parents when an abused or neglected child is removed from them. Eff. 9/1/82.

Chapter 500 (Assembly bill 13073). Amends the Judiciary Law, Family Court Act, Court of Claims Act, NYC Criminal Court Act, and chapter 694 of the Laws of 1962 to add 98 state-paid judges to the Unified Court System. Eff. 7/13/82 but some sections are not effective until elections are held in 11/82 or 11/83.

Chapter 638 (Senate bill 10346-A). Implements the collective bargaining agreement providing salary increases and other benefits negotiated by Unified Court System with employee organizations representing certain non-judicial officers and employees in New York City units. Eff. 7/22/82 but retroactive to 10/1/79.

Chapter 640 (Senate bill 10464). Amends chapters 534 and 545 of the Laws of 1980 and chapter 90 of the Laws of 1982 to enact provisions implementing certain collective bargaining agreements. Eff. 7/22/82 but deemed effective 4/1/82 with §§5, 6, 7 and 8 deemed effective from 4/1/81.

Chapter 665 (Assembly bill 8959). Repeals §110(g) of the New York City Civil Court Act which required the clerk of the housing court to maintain a cross-index system by building address of all actions affecting each building. Eff. 7/22/82.

Chapter 679 (Assembly bill 10925-A). Amends §690.35, -.36, -.40, -.45 of the CPL to authorize oral applications for a search warrant to be made by public servants. Eff. 9/20/82.

Chapter 773 (Senate bill 8987-A). Amends §§418, 532 of the Family Court Act to require the moving party to pay the cost of blood grouping tests in support or paternity proceedings; provided, if the moving party is unable to pay, the court may order a public health officer to conduct the test or may direct payment therefor from the funds of the local social services district. Eff. 9/25/82.

Chapter 777 (Senate bill 9077). Amends §90 of the Judiciary Law and chapter 674 of the Laws of 1979 to make technical corrections to provisions governing the disbarment of attorneys convicted of certain felonies. Eff. 7/27/82.

Measures introduced at the request of the Office of Court Administration which did not become law during the 1982 Session include:

Senate 1931-B/Assembly 3358. This measure would amend section 434 of the Judiciary Law to eliminate the unnecessary distribution of official law reports.

Senate 3213/Assembly 3371. This measure would amend section 148-a of the Judiciary Law and CPLR 3403(a) to implement recommendations of the Ad Hoc Committee on Medical Malpractice Panels.

Senate 2448-A/Assembly 3673-A. This measure would amend CPLR 3222, 6001 to abolish civil arrest in the enforcement of money judgments.

Senate 2238-A/Assembly 5428-A. This measure would amend CPLR 3101, 3117 to broaden the category of health care providers who may be examined before trial.

Senate 2239-A/Assembly 654. This measure would amend CPLR 7803, 7804 to clarify jurisdiction of special term in Article 78 proceedings involving substantial evidence issues.

Senate 2240 /Assembly 5061. This measure would amend CPLR 5601 to require the dissent of two justices of the Appellate Division for an appeal to the Court of Appeals.

Senate 2241/Assembly 3360. This measure would amend CPLR 6313 to require a court to determine whether notice should be given the defendant in an application for a temporary restraining order.

Senate 2242/Assembly 3359. This measure would amend CPLR 8001 to increase attendance fees payable to witnesses.

Senate 3504. This measure would amend the Unified Court Budget Act to authorize the alteration of collective bargaining units by PERB.

Senate 1934/Assembly 3363. This measure would amend CPLR 8201-8204 to increase costs awarded in civil actions.

Senate 5222-A/Assembly 7711-A. This measure would amend section 756(b) of the Family Court Act to specify who may file petitions for extension of placement and to require extensions of placement to be filed 60 days prior to expiration of period of placement.

Senate 1935/Assembly 7511. This measure would amend the Family Court Act to clarify procedures involving the disposition of fingerprints, palmprints and photographs of juveniles.

Senate 1154/Assembly 3372. This measure would amend section 2 of the Court of Claims Act to permanently authorize 36 additional judges of the court.

Senate 2246/Assembly 5063. This measure would amend CPL 450.50 to permit the prosecution of indictments in extraordinary cases.

Senate 4399/Assembly 6158. This measure would amend CPL 660.20, 670.10 to expand grounds for the use of conditional examinations of witnesses.

Senate 2247/Assembly 5064. This measure would add a new Article 695 to the Criminal Procedure Law to establish procedures for securing identification orders.

Senate 2248-B/Assembly 4838. This measure would amend CPL 200.90 to permit bills of particulars upon demand.

Senate 3215/Assembly 5065. This measure would amend CPL 710.60 to authorize summary dismissal of factually unsupported motions to suppress statements.

Senate 6048/Assembly 6442-B. This measure would amend CPL 290.10 to permit a court to reserve decision on a motion for a trial order of dismissal.

Senate 3216/Assembly 5066. This measure would amend CPL 270.10 to require the presiding judge to conduct the *voir dire* examination.

Senate 3217/Assembly 5067. This measure would

amend CPL 710.40 to authorize a hearing upon a motion to suppress during the trial.

Senate 6512. This measure would amend the Criminal Procedure Law to establish procedures for obtaining warrants of arrest prior to the commencement of a criminal action.

Senate 6513/Assembly 655. This measure would amend CPL 10.40 to authorize official forms.

Senate 3218/Assembly 5429. This measure would amend CPL 460.20 to require that permission to appeal to the Court of Appeals be sought from an Appellate Division justice who participated in hearing the appeal.

Senate 5551/Assembly 5418. This measure would amend CPL 270.20 to reduce the number of peremptory challenges.

Senate 3219/Assembly 6443. This measure would amend CPL 710.70 to permit waivers of appeals of denials of motions to suppress evidence.

Senate 3220 /Assembly 5430. This measure would amend CPL 240.40 to expand discovery of nontestimonial evidence.

Senate 3221/Assembly 5431. This measure would amend CPL 310.10 to authorize the temporary separation of a deliberating jury, with consent of the parties.

Senate 6531/Assembly 2237. This measure would amend the Penal Law to clarify the definition of bribery and related crimes.

Senate 1153/Assembly 3674. This measure would amend section 722-b of the County Law to permit review by the Appellate Division of assigned counsel fees and disbursements.

Senate 3222/Assembly 5433. This measure would amend CPL 725.10 to clarify provisions governing the release of grand jury minutes involving juvenile offenders.

Senate 896/Assembly 5437. This measure would amend CPL 190.40 to clarify law of immunity for grand jury witnesses who give nontestimonial identification evidence.

Senate 6515/Assembly 5435. This measure would amend CPLR 3215 to clarify provisions relating to notice to defendants in actions arising out of consumer credit transactions.

Senate 6585/Assembly 7678. This measure would amend the Family Court Act and Education Law to transfer jurisdiction over the special education needs of

handicapped children from the Family Court to local school districts.

Senate 6507-B/Assembly 1307. This measure would amend CPLR 5519(a)(1) to place a 15-day limit on automatic stays in certain cases.

Senate 3223/Assembly 5506. This measure would amend CPLR 7503 to provide that issues of fact which arise upon an application to compel or stay arbitration shall be tried by the court without a jury.

Senate 6543/Assembly 5783. This measure would amend CPLR 7502 to make the provisional remedies of attachment and the preliminary injunction available in Article 75 arbitration proceedings.

Senate 4844/Assembly 5508. This measure would amend the Judiciary and Real Property Tax Laws to establish a hearing examiner program to expedite resolution of real property tax assessment review proceedings.

Senate 3833-B/Assembly 6444-B. This measure would amend section 39(b) of the Judiciary Law to authorize an increase in State funding to local governments that provide security services to the courts.

Assembly 10901. This is a concurrent resolution to amend Article VI of the Constitution to establish an appellate court for the review of felony sentences.

Senate 9371. This measure would amend the Criminal Procedure Law to establish a procedure for examination of the source of cash bail of \$10,000 or more.

Senate 9284/Assembly 10902. This measure would amend CPL 450.90 to permit Court of Appeals review of unpreserved questions of law decided by an Appellate Division in the interests of justice.

Senate 9419. This measure would amend Penal Law 265.06 to make an affirmative defense, in a prosecution for criminal possession of a weapon, that defendant had only temporary possession of the weapon.

Senate 8517/Assembly 12328. This measure would amend the New York City Civil Court Act, the Uniform City Court Act, the Uniform District Court Act and the Uniform Justice Court Act in relation to the appearance of a corporation in the defense of a small claims action.

Senate 9372/Assembly 11262. This measure would amend CPL 190.65 in relation to corroboration of evidence before a grand jury.

1983 Report

of the

Advisory Committee on Civil Practice

to the

Chief Administrator of the Courts

of the

State of New York

March 15, 1983

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Introduction

The members of the Committee are Sheila L. Birnbaum, Chairperson, William D. Eggers, John T. Frizzell, Hyman W. Gamso, Paul S. Graziano, Robert T. Greig, Raymond W. Hackbarth, James J. Harrington, Edward J. Hart, Richard B. Long, John A. Murray and David D. Siegel. During the past year, there have been no changes in the membership of the Committee. The Committee members wish to take this opportunity to congratulate their distinguished Chairperson, Dean Sheila L. Birnbaum, upon her appointment as Associate Dean of the New York University School of Law, where, in addition to her new administrative duties, she continues to teach as Professor of New York Civil Practice.

There are four parts to our Report.

Part I briefly discusses the disposition of the Committee's 1982 proposals and submissions.

Part II sets forth the Committee's 1983 recommendation on disclosure, with explanatory notes.

Part III sets forth, with explanatory notes, the remainder of the Committee's 1983 recommendations, other than the recommendation on disclosure, which is discussed in Part II.

Part IV summarizes the Committee's ongoing prospects and tentative plans for future study and review.

In addition to recommending its own proposals on civil practice in the courts, the Committee reviews and comments on numerous civil procedure bills from other sources, on request of the Legislature. This report, however, is not appropriate for summarizing such evaluations.

The Committee wishes to acknowledge the continuous aid and assistance of its counsel, William A. Bulman, Jr. and John P. Brosnan of the Office of Court Administration.

Part I Disposition of 1982 Recommendations

1. CPLR 308, CPLR 3215(e), (f).

This bill, which relates to additional notice of default judgment in actions based on consumer credit transactions, was not enacted in 1982 and is resubmitted by the Committee in 1983. It appears at pages 53 through 54 of this Annual Report, together with discussion of the bill's purpose and the circumstances which prompt its submission.

2. CPLR 2103(b) (2).

This bill, designed to extend the time for service of papers by mail on an attorney, was enacted as Chapter 20 of the Laws of 1982.

3. CPLR 3117(a) (4).

This amendment would broaden the category of health care personnel subject to pretrial deposition and the use of such depositions at trial, without a showing of special circumstances. It was not enacted in 1982 and is not being resubmitted in 1983 because the Committee's proposed revision of disclosure procedure would incorporate some parts of the amendment and would be inconsistent with other portions.

4. CPLR 5250, 3222(b) (1), 6001.

This purely mechanical amendment to strike obsolete references to civil arrest, abolished in 1979, which appeared at page 152 of the Fourth Annual Report of the Chief Administrator of the Courts, was not enacted in 1982. For technical reasons, it is being resubmitted as two separate bills, one to amend CPLR 5250, which appears at page 58 of this Report, the other to amend CPLR 3222(b) (1) and CPLR 6001, which is addressed at page 58 of this Annual Report.

5. CPLR 5601(a).

This amendment is designed to curtail appeals as of right to the Court of Appeals in order to permit the Court to select more cases of importance through the appeals by permission procedure. This would reduce the number of appeals now clogging the Court's calendars, many of which do not involve important issues of law, while allowing the Court to concentrate on eliminating lower appellate court conflicts and addressing more significant questions. This bill did not pass in 1982 and will be resubmitted in 1983 in the same or in revised form. The amendment with comment appears at page 59 of this Annual Report.

6. CPLR 6313(a)

This amendment would facilitate giving informal notice of applications for temporary restraining orders, where feasible and practicable, thus encouraging the courts to require such notice. The bill, which was not enacted last year is resubmitted with some minor revisions to reflect an amendment effected by Chapter 235 of the Laws of 1982. The bill appears with comment at page 60 of this Annual Report.

7. CPLR 7502(c).

This bill, which would add new subdivision (c) to CPLR 7502, to make the provisional remedies of attachment and preliminary injunction available in Article 78 proceedings, failed to pass last year. It is resubmitted this year, with slight revisions, and appears with comments at pages 60 through 62 of this Annual Report.

8. CPLR 7503(d).

This amendment, which would direct that the trial of issues of fact arising on an application to compel or stay an arbitration be conducted without a jury, failed to pass last year. The amendment is resubmitted by the Committee as set forth, with comment at page 62 of this Annual Report.

9. CPLR 7803(4)

This bill, which was not enacted last year, would clarify that only evidence taken under oath is reviewable under the substantial evidence question. The Committee withdraws the bill this year, pending judicial resolution of related problems.

10. CPLR 7804(g)

This bill, which was not enacted last year, would clarify which questions the Supreme Court is to answer in an Article 78 proceeding before transferring the case to the Appellate Division for review of the substantial evidence question. It appears with comment at pages 62 through 63 of this Annual Report.

11. CPLR 8001(a)

This bill, which would increase attendance fees and travel expenses payable to witnesses, was not enacted last year and is submitted again this year. The bill and comment appear at pages 63 through 64 of this Annual Report.

12. CPLR 8201-8204.

This bill, which would increase costs awarded in civil actions, was not enacted last year and is resubmitted this year. The proposal, with comments, is set forth at pages 64 through 65 of this Annual Report.

13. CCA §1809, UCCA §1809

UDCA §1809, UJCA §1809

This bill, which would amend analogous provisions of the New York City Civil Court Act and several uniform court acts to permit any corporation to defend a small claims action without having to retain an attorney, was not enacted last year. It is resubmitted this year, and appears at pages 65 through 66 of this Annual Report.

Part II - Recommendation on Disclosure

CPLR Article 31

The Committee recommends, after thorough study of the law and practice of disclosure in civil actions, that the following revisions of portions of CPLR Article 31 be adopted to ensure fairness to litigants and to effect the expeditious disposition of civil actions.

Recommendation

AN ACT

To Amend the Civil Practice Law and Rules, in Relation to Disclosure

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section thirty-one hundred one of the civil practice law and rules, as subdivision (f) thereof was added by chapter six hundred sixty-eight of the laws of nineteen hundred seventy-five, and as subdivision (a) thereof was amended by chapter two hundred sixty-eight of the laws of nineteen hundred seventy-nine, and as subdivision (g) thereof was added by chapter two hundred eighty-three of the laws of nineteen hundred eighty, is amended to read as follows:

Section 3101. Scope of disclosure.

(a) Generally. There shall be full disclosure of all [evidence material and necessary in] *matter relevant to* the prosecution or defense of an action, regardless of the burden of proof, by *any person* [:

(1) a party, or the officer, director, member, agent or employee of a party;

(2) a person who possessed a cause of action or defense asserted in the action;

(3) a person about to depart from the state, or without the state, or residing at a greater distance from the place of trial than one hundred miles, or so sick or infirm as to afford reasonable grounds of belief that he will not be able to attend the trial, or a person authorized to practice medicine who has provided medical care or diagnosis to the party demanding disclosure, or who has been retained by him as an expert witness; and

(4) any person where the court on motion determines that there are adequate special circumstances].

(b) Privileged matter. Upon objection [by a party] privileged matter shall not be obtainable.

(c) Attorney's work product. The work product of an attorney shall not be obtainable.

(d) *Trial Preparation.* [Material prepared for litigation. The following shall not be obtainable unless the court finds that the material can no longer be duplicated because of a change in conditions and that withholding it will result in injustice or undue hardship:

1. any opinion of an expert prepared for litigation; and

2. any writing or anything created by or for a party or his agent in preparation for litigation.]

1. *Experts. Disclosure of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (a) of this section and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:*

(i) *Upon request a party shall identify each person whom such party expects to call as an expert witness at trial and disclose in reasonable detail the subject matter on which each such expert is expected to testify, the substance of the facts and opinions to which each such expert is expected to testify and a summary of the grounds for each such opinion.*

(ii) *Disclosure by a person whom a party expects to call as an expert witness or by an expert retained or specially employed by the party in anticipation of litigation or for trial may be obtained only by court order upon a showing of special circumstances and subject to such restrictions as to scope and such provisions concerning fees and expenses as the court may deem appropriate.*

2. *Materials. Subject to the provisions of paragraph one of subdivision (d), materials otherwise discoverable under subdivision (a) and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including an attorney, consultant, surety, indemnitor, insurer or agent) may be obtained only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation.*

(e) *Party's statement. A party may obtain a copy of his own statement.*

(f) *Contents of insurance agreement. A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purpose of this subdivision, an application for insurance shall not be treated as part of an insurance agreement.*

(g) *Accident reports. Except as otherwise provided by law, in addition to any other matter which may be subject to disclosure, there shall be full disclosure of any written report of an accident prepared in the regular course of business operations or practices of any person, firm, corporation, association or other public or private entity, unless prepared by a police or peace officer for a criminal investigation or prosecution and disclosure would interfere with a criminal investigation or prosecution.]*

(g) *Witnesses. A party shall disclose the names and addresses of all persons having knowledge of any matter discoverable under this section.*

(h) *Amendment or supplementation of responses. A party who has responded to a request for disclosure shall amend or supplement the response if the party thereafter obtains information that the response was incorrect when made or that the response though correct and complete when made is no longer correct and complete, and the circumstances are such that a failure to amend or supplement the response would be materially misleading. Further amendment or supplementation may be obtained by court order.*

§2. Subdivision (c) of rule thirty-one hundred two of such law and rules is amended to read as follows:

(c) *Before action commenced, disclosure to aid in bringing an action, to preserve information or to aid in arbitration, may be obtained, but only by court order. The court may appoint a referee to take testimony. [Where such disclosure is obtained for use in an action involving title to real property the deposition or other document obtained shall be promptly recorded in the office of the clerk of the county in which the real property is situated.]*

§3. Subdivision (a) of section thirty-one hundred three of such law and rules is amended to read as follows:

(a) *Prevention of abuse. The court may at any time on its own initiative, or on motion of any party [or witness] or of any person from whom discovery is sought, make a protective order denying, limiting, conditioning or regulating the use of any disclosure device. Such order shall be designed to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts.*

§4. Rule thirty-one hundred six of such law and rules is amended to read as follows:

Rule 3106. *Priority of depositions; witnesses; prisoners; designation of deponent.*

(a) *Normal priority. After an action is commenced, any party may take the testimony of any person by deposition upon oral or written questions. Leave of the court, granted on motion, shall be obtained if notice of the taking of the deposition of a party is served by the plaintiff [within twenty days after service of the complaint] before that party's time for serving a responsive pleading has expired.*

(b) *Witnesses. Where the person to be examined is not a party or a person who at the time of taking the deposition is an officer, director, member or employee of a party, he shall be served with a subpoena. Unless the court orders otherwise, on motion with or without notice, such subpoena shall be served at least ten days before the examination. Where a motion for a protective*

order against such an examination is made, the witness shall be notified by the moving party that the examination is stayed.

(c) Prisoners. The deposition of a person confined under legal process may be taken only by leave of the court.

(d) *Designation of deponent.* A party desiring to take the deposition of a particular officer, director, member or employee of a person shall include in the notice or subpoena served upon such person the identity, description or title of such individual and such person shall produce the individual so designated.

§5. Rule thirty-one hundred eight of such law and rules, as redesignated by chapter three hundred eighteen of the laws of nineteen hundred sixty-two, and as amended by chapter five hundred thirty-two of the laws of nineteen hundred sixty-three, is amended to read as follows:

Rule 3108. Written questions [; when permitted].

A deposition may be taken on written questions [when the examining party and the deponent so stipulate or when the testimony is to be taken without the state]. A commission or letters rogatory may be issued where necessary or convenient for the taking of a deposition outside of the state.

§6. Subdivision (a) of rule thirty-one hundred nine of such law and rules is amended to read as follows:

(a) Notice of taking; service of questions and cross-questions. A party desiring to take the deposition of any person upon written questions shall serve such questions upon each party together with a notice stating the name and address of the person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within [ten] thirty days thereafter a party so served may serve written cross-questions upon each party. Within [five] ten days thereafter the original party may serve written recross-questions upon each party.

§7. Paragraph 2 of subdivision (a) of rule thirty-one hundred thirteen of such law and rules is amended to read as follows:

2. without the state but within the United States or within a territory or possession subject to the [dominion] jurisdiction of the United States, a person authorized to take acknowledgments of deeds outside of the state by the real property law of the state or to administer oaths by the laws of the United States or of the place where the deposition is taken; and

§8. Subdivision (a) of rule thirty-one hundred sixteen of such law and rules, as amended by chapter two hundred ninety-two of the laws of nineteen hundred seventy-eight is amended to read as follows:

(a) Signing. The deposition shall be submitted to the witness for examination and shall be read to or by him, and any changes in form or substance which the witness desires to make shall be entered at the end of the deposition with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness before any officer authorized to administer an oath [, except that a witness who is an adverse party shall not be required to sign such deposition upon thirty days prior written notice to return the examination signed]. If [a] the witness [, other than an adverse party,] fails to sign the deposition, [the officer before whom the deposition was taken shall sign it and state on the record the fact of the witness' failure or refusal to sign, together with any reason given. The deposition] it may [then] be used as fully as though signed.

§9. Subdivision (a) of rule thirty-one hundred twenty of such law and rules, as redesignated by chapter three hundred fifteen of the laws of nineteen hundred sixty-two, and as amended by judicial conference proposal number two of nineteen hundred sixty-six, is amended to read as follows:

(a) As against party:

1. After commencement of an action, any party may serve on any other party notice:

(i) to produce and permit the party seeking discovery, or someone acting on his behalf, to inspect, copy, test or photograph any [specifically] designated documents or any things which are in the possession, custody or control of the party served [, specified with reasonable particularity in the notice]; or

(ii) to permit entry upon designated land or other property in the possession, custody or control of the party served for the purpose of inspecting, measuring, surveying, sampling, testing, photographing or recording by motion pictures or otherwise the property or any [specifically] designated object or operation thereon.

2. The notice shall specify the time, *which shall be not less than twenty days after service of the notice, and the place and manner of making the inspection, copy, test or photograph, or of the entry upon the land or other property and, in the case of an inspection, copying, testing or photographing, shall set forth the items to be inspected, copied, tested or photographed by individual item or by category, and shall describe each item and category with reasonable particularity.*

§10. Subdivision (a) of section thirty-one hundred twenty-one of such law and rules is amended to read as follows:

(a) Notice of examination. After commencement of an action in which the mental or physical condition or the blood relationship of a party, or of an agent, employee or person in the custody or under the legal control of a party, is in controversy, any party may serve notice on another party to submit to a physical,

mental or blood examination by a designated physician, or to produce for such examination his agent, employee or the person in his custody or under his legal control. The notice may require duly executed and acknowledged written authorizations permitting all parties to obtain, and make copies of, the records of specified hospitals relating to such mental or physical condition or blood relationship; where a party obtains a copy of a hospital record as a result of the authorization of another party, he shall deliver a duplicate of the copy to such party. A copy of the notice shall be served on the person to be examined. It shall specify the time, *which shall be not less than twenty days after service of the notice, and the conditions and scope of the examination.*

§11. Rule thirty-one hundred twenty-two of such law and rules, as amended by chapter eighty of the laws of nineteen hundred seventy-nine, is amended to read as follows:

Rule 3122. Objection to discovery, inspection or examination.

Within [ten] *twenty* days of service of a notice under rule 3120 or section 3121, [a] *the party to whom the notice is directed* [may serve a notice of motion for a protective order, specifying his objections.], *if that party objects to the disclosure, inspection or examination, shall serve a response which shall state with reasonable particularity the reasons for each objection. If objection is made to part of an item or category, the part shall be specified. The party seeking disclosure under rule 3120 or section 3121 may move for an order under rule 3124 with respect to any objection to or other failure to respond to, or permit inspection as requested by, the notice, or any part thereof.*

§12. Subdivision (a) of section thirty-one hundred twenty-three of such law and rules, as amended by chapter five hundred thirty-two of the laws of nineteen hundred sixty-three, is amended to read as follows:

(a) Notice to admit; admission unless denied or denial excused. At any time after service of the answer or after the expiration of twenty days from service of the summons, whichever is sooner, and not later than twenty days before the trial, a party may serve upon any other party a written request for admission by the latter of the genuineness of any papers or documents, or the correctness or fairness of representation of any photographs, described in and served with the request, or of the truth of any matters of fact set forth in the request, as to which the party requesting the admission reasonably believes there can be no substantial dispute [at the trial] and which are within the knowledge of such other party or can be ascertained by him upon reasonable inquiry. Copies of the papers, documents or photographs shall be served with the request unless copies have already been furnished. Each of the matters of which an admission is requested shall be deemed admitted unless within twenty days after service thereof or within such further time as the court may allow, the party to whom the

request is directed serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters, *or, if the denial is based upon lack of knowledge, that the means of securing such knowledge is not reasonably available to the party.* If the matters of which an admission is requested cannot be fairly admitted without some material qualification or explanation, or if the matters constitute a trade secret or such party would be privileged or disqualified from testifying as a witness concerning them, such party may, in lieu of a denial or statement, serve a sworn statement setting forth in detail his claim and, if the claim is that the matters cannot be fairly admitted without some material qualification or explanation, admitting the matters with such qualification or explanation.

§13. Rule thirty-one hundred twenty four is REPEALED, and a new section to be section thirty-one hundred twenty-four is added, to read as follows:

§3124. *Failure to disclose; motion to compel disclosure*

If a person fails to respond to or comply with any request, notice, interrogatory, demand, question or order under this article, except a notice to admit under section 3123, the party seeking disclosure may move to compel compliance or a response. For purposes of this section, an evasive or incomplete answer is a failure to comply.

§14. Section thirty-one hundred twenty-six of such law and rules, as amended by chapter forty-two of the laws of nineteen hundred seventy-eight, is amended to read as follows: Section 3126. Penalties for [refusal] *failure to comply with orders or to disclose.*

If any party, or a person who at the time a deposition is taken or an examination or inspection is made[,] is an officer, director, member, employee or agent of a party or otherwise under a party's control, [refuses] *fails* to obey an order for disclosure or willfully fails to disclose information which the court finds ought to have been disclosed pursuant to [notice duly served] *this article*, the court may make such orders with regard to the failure [or refusal] as are just, among them:

1. an order that the issues to which the information is relevant shall be deemed resolved for purposes of the action in accordance with the claims of the party obtaining the order; or

2. an order prohibiting the disobedient party from supporting or opposing designated claims or defenses, from producing in evidence designated things or items of testimony, or from introducing any evidence of the physical, mental or blood condition sought to be determined, or from using certain witnesses; or

3. an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or any part thereof, or rendering a judgment by default against the disobedient party.

§15. Such law and rules are amended by adding a new section, to be section thirty-one hundred twenty-seven of such law and rules to read as follows:

§3127. *Award of costs and expenses of motions.*

(a) *If a motion under section 3103, 3124, or 3126 is granted, the court shall require the party or person whose conduct necessitated the motion or the attorney advising such conduct or both to pay to the moving party the costs and reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or excusable or that other circumstances make an award of costs and expenses unjust.*

(b) *If a motion under section 3103, 3124, or 3126 is denied, the court shall require the moving party or the attorney advising the motion or both to pay to the party or person who opposed the motion the costs and reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or excusable or that other circumstances make an award of costs and expenses unjust.*

(c) *If a motion under section 3103, 3124, or 3126 is granted in part and denied in part, the court shall apportion costs and reasonable expenses incurred in relation to the motion, including attorney's fees, among the parties and persons in a just manner.*

§16. Section thirty-one hundred thirty of such law and rules, as amended by chapter one hundred ninety-seven of the laws of nineteen hundred seventy-nine, is amended to read as follows: Section 3130. Use of interrogatories.

After commencement of an action, any party may serve upon any other party written interrogatories. A party may not serve written interrogatories on another party and also demand a bill of particulars pursuant to section 3041 [nor, in the case of an action to recover damages for an injury to property or a personal injury resulting from negligence or wrongful death, take a deposition pursuant to rule 3107] without leave of court.

§17. Rule thirty-one hundred thirty-two of such law and rules, as added by chapter four hundred twenty-two of the laws of nineteen hundred sixty-three, is amended to read as follows:

Rule 3132. *Normal priority* [Service] of interrogatories.

[After commencement of an action, any party may

serve upon any other party written interrogatories.] If service of *written interrogatories* is made by any plaintiff upon any defendant [within twenty days after service upon him of the summons and complaint, or service is made by any defendant upon the plaintiff within five days after service upon him of the summons and complaint] *before that defendant's time for serving a responsive pleading has expired*, leave of court granted [with or without notice] *on motion* must be obtained. A copy of the interrogatories and of any order made under this rule shall be served on each party.

§18. Rule thirty-one hundred thirty-three of such law and rules, as added by chapter four hundred twenty-two of the laws of nineteen hundred sixty-three, is amended to read as follows:

Rule 3133: *Service of answers or* [Objections] *objections* to interrogatories.

(a) [When objection may be made] *Service of an answer or objection*. Within [ten] *thirty* days after service of interrogatories, the party upon whom they are served [may move upon notice to strike out any interrogatory, stating the grounds for objection] *shall serve upon each of the parties a copy of the answer to each interrogatory, except any interrogatory to which the party objects, in which event the reasons for the objection shall be stated with reasonable particularity.*

[(b) Suspension pending rule. The answer to any interrogatory to which objection is made shall be deferred until the objections are ruled on by the court.]

(b) *Form of answers and objections to interrogatories. Interrogatories shall be answered in writing under oath by the party upon whom served, if an individual, or, if the party served is a corporation, a partnership, or a sole proprietorship, by any officer, director, member, agent or employee having the information. Each question shall be answered separately and fully and each answer shall be preceded by the question to which it responds. Objections to interrogatories shall be signed by the attorney for the party making them.*

(c) *Amended answers. Except with respect to amendment or supplementation of responses pursuant to subdivision (h) of section 3101, answers to interrogatories may be amended or supplemented only by order of the court upon motion.*

§19. Rule thirty-one hundred thirty-four of such law and rules is REPEALED.

§20. Section thirty-one hundred forty of such law and rules, as added by chapter six hundred forty of the laws of nineteen hundred sixty-seven, is amended to read as follows:

§3140. Disclosure of appraisals in proceedings for [condemnation] *condemnation*, appropriation or review of tax assessments.

Notwithstanding the provisions of subdivisions (c) and (d) of section 3101, the [appellate division in each judicial department] *chief administrator of the courts* shall adopt rules governing the exchange of appraisal reports intended for use at the trial in proceedings for condemnation, appropriation or review of tax assessments

§21. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law.

Note: Rule 3124, relating to motion to compel disclosure, would be REPEALED and replaced by new section 3124. Rule 3134, relating to answers to interrogatories, would be REPEALED and the matter inserted in §3133.

Comment

Over the two-year period during which the Committee devoted a major share of its time to this important project, each member contributed significantly to the final product. Special mention, however, is owing to Robert T. Greig, Esq., a member of the Committee, and the Honorable William P. McCooe, Justice of the Supreme Court, a consultant to the Committee, for their outstanding dedication of time, effort and talent to the drafting of the proposals set forth herein.

In general, this measure is being proposed in order to accomplish the following ends: (1) liberalization of disclosure, (2) codification of recent New York case law, (3) greater statewide uniformity in disclosure proceedings, (4) elimination of the "adequate special circumstances" requirement for deposing nonparty witnesses, (5) establishment of a notice procedure to obtain the names of experts retained for appearance at the trial and the anticipated substance of the experts' testimony, (6) broadening of the disclosure of expert witnesses, (7) curtailment of expensive and time-consuming motion practice, and (8) the imposition of adequate sanctions, such as the payment of costs and reasonable attorneys' fees, against parties who ignore or misuse the disclosure process.

A more detailed explanatory commentary upon this measure, addressed in progressive order to each section of law proposed to be amended in CPLR Article 31, follows:

Section 3101

Subdivision (a)

The preamble and subdivision (a) of section 3101 would be amended to permit disclosure of "relevant" matter by "any person". This change would reflect the broad interpretation given to the existing "material and necessary" standard by the Court of Appeals in *Allen v. Crowell-Collier Publishing Co.*, 21 N.Y.2d 403 (1968), and would conform the statutory language to the standard that is generally applied in practice. See *Hoening v. Westphal*, 52 N.Y.2d 605, 608 (1981); *Prink v.*

Rockefeller Center, Inc., 48 N.Y.2d 309, 314 n. 1 (1979). The amendment would also make it clear that disclosure is not limited to information and materials which would be admissible as evidence at trial.

The existing enumeration of persons subject to disclosure would be eliminated, since the amendment would permit the disclosure of relevant matter by any person, without the need for showing "adequate special circumstances".

Under the current language in Section 3101(a)(4), there has been considerable disagreement about the showing of "adequate special circumstances" that will warrant disclosure of information from nonparties. See, e.g., *Cirale v. 80 Pine St. Corp.*, 35 N.Y.2d 113, 116 (1974); *Mogollon v. South African Marine Corp.*, 80 A.D.2d 636 (2nd Dept. 1981); *Kenford Co. v. County of Erie*, 41 A.D.2d 586 (4th Dept. 1973); *Pascoe v. Long Island R.R. Co.*, 44 A.D.2d 92 (Sup. Ct., Queens Co., 1977). Under the standard most frequently applied, the mere statement by an attorney that a deposition is needed in order to prepare fully for trial has been held to constitute a sufficient showing of "special circumstances". See, e.g., *Gersten v. New York Hospital*, 81 A.D.2d 632 (2d Dept. 1981); *Jones v. Wissenbach*, 80 A.D.2d 760 (2nd Dept. 1981); see 3A Weinstein, Korn and Miller, N.Y. Civ. Prac. ¶3101.32. The procedure applicable to disclosure from nonparties under Section 3101(a)(4) has also been the subject of controversy and has fostered considerable motion practice. The courts have reached contrary results as to whether a preliminary motion is required in every case, see, e.g., *Bonito Maritime Corp. v. St. Paul Mercury Ins. Co.*, 68 A.D.2d 864 (1st Dept. 1979) (concurring opinion); *Post v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 79 A.D.2d 558 (1st Dept. 1980); *Kurzman v. Burger*, 98 Misc.2d 244 (Sup. Ct., N.Y. Co., 1979), or whether it is proper to proceed by subpoena and notice, see, e.g., *McNulty v. McNulty*, 81 A.D.2d 581 (2d Dept. 1981); *Bush Homes, Inc. v. Franklin Nat'l Bank of Long Island*, 61 Misc.2d 495 (Sup. Ct., Nassau Co., 1969).

These provisions require amendment. The Committee believes that the notice and subpoena procedure is preferable to requiring a motion and further believes that disclosure should be permitted against all nonparties having information relevant to the prosecution or defense of a civil action. Although the amendment would remove the standard of "material and necessary" in the opening paragraph of section 3101(a) and the standard of "adequate special circumstances" in section 3101(a)(4), the Committee believes that adequate safeguards against abuse remain in the power of the Court under section 3103(a) to make a protective order "to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts." On the premise that trial attorneys generally will use the disclosure devices in a responsible manner, the amendment would shift the burden of making the motion from the party seeking disclosure to the party or nonparty witness opposing it. The Committee believes that this amendment would

reduce motion practice, with the associated demands on judicial resources.

Subdivision (b)

Subdivision (b) would be amended to reflect the fact that the holder of the privilege in question need not be a party to the action in order to invoke the privilege.

Subdivision (c)

Subdivision (c) would not be amended. The scope of the "work product" rule has been adequately defined by case law and commentators. Subdivision (c) should be construed narrowly "to include only those materials prepared by the attorney, acting as an attorney, and containing his or her analysis and trial strategy." 3A Weinstein, Korn & Miller N.Y. Civ. Prac. ¶13101.44. Under this narrow construction, materials that are subject to disclosure under the amended provisions of subdivision (d) would not be protected under subdivision (c).

Subdivision (d)

Subdivision (d) would be amended to expand and clarify the scope of pretrial discovery in two areas which have been a source of many problems in practice. Subdivision (d)(1) would be amended to establish that a party is entitled to obtain the identity of persons that another party expects to call as expert witnesses at trial and information concerning each such expert's expected testimony. Subdivision 3101(d)(1) currently allows pretrial discovery of the opinions of an expert prepared for trial only in very limited circumstances. In the opinion of the Committee, experience in New York under this rule has confirmed the observation made by the Advisory Committee on the Federal Rules of Civil Procedure in its notes to the 1970 amendments to the federal rules that "a prohibition against discovery of information held by expert witnesses produces in acute form the very evils that discovery has been created to prevent." As amended, subdivision (d)(1) would incorporate the substance of the federal rule on the discovery of experts expected to testify at trial. The procedure for obtaining such discovery would be any of the procedures available for obtaining information from a party (e.g., a request, interrogatories). As under the federal rule, the amendment would enable the parties to conduct the basic discovery regarding experts without court intervention, but would not preclude further discovery by court order in appropriate circumstances and with appropriate protection against misuse of the discovery process. The decisions of the federal courts applying Fed. R. Civ. P. 26(b)(4) would therefore provide guidance in the interpretation of the amended subdivision (d)(1). It is contemplated that discovery under subdivision (d)(1)(ii) would be permitted only for compelling reasons or if a party fails to make a good faith response to a request under subdivision (d)(1)(i). A party who, when served with a request under subdivision (d)(1), does not expect to call any expert witnesses or has not determined which, if any,

experts the party expects to call as expert witnesses, would be required to give written notice to that effect to the party serving the request. However, if, subsequent to responding to the request, the party's expectation changed, supplementation or amendment of and the response would be required under subdivision (h), as failure to amend or supplement a response to the effect that a party does not at the time of responding expect to call any expert witnesses at trial would be materially misleading if the party making the response subsequently decided to call such a witness.

The amendment of subdivision (d)(2) would similarly expand the scope of pretrial discovery of materials prepared in anticipation of litigation or for trial, although such discovery would continue to be permitted in only fairly narrow circumstances. As is the case with subdivision (d)(1), subdivision (d)(2) follows the federal rule and thus could be interpreted in light of federal decisions.

Subdivision (g)

Subdivision (g), adopted in 1980 as an interim measure, would be deleted as unnecessary in light of the amendment of subdivision (1) and subdivision (d)(2). The Committee believes that the accident reports referred to in present subdivision (g) were and are discoverable under Article 31, both prior to and since the 1980 amendment, and will continue to be discoverable under the proposed amendment.

New subdivision (g) would explicitly allow discovery of the identity and location of all persons, such as eye and notice witnesses, having knowledge of any discoverable matter. This provision would overrule those New York decisions holding that the work product rule, which would be retained intact in subdivision (c), applies to the names and addresses of witnesses located by an attorney in the course of an investigation conducted in preparation for trial. *See Zayas v. Morales*, 45 A.D.2d 610, 613 (2d Dept. 1974). A party making a request for information pursuant to subdivision (g) would, of course, be required to frame the request with a reasonable degree of specificity as to the discoverable matters with respect to which the request is being made. A bald request for information concerning "all persons having knowledge of any discoverable matter" would ordinarily be unreasonable.

Subdivision (h)

The CPLR does not contain a provision comparable to Fed. R. Civ. P. 26(e) explicitly requiring a party under certain circumstances to supplement or amend responses to discovery requests. New subdivision (h) would incorporate the substance of the federal rule, which, the Committee believes, establishes a reasonable balance between the need to maintain the integrity of responses to discovery requests and the need to avoid imposing on a party a burdensome obligation to review and update on a continuing basis responses to discovery requests. New subdivision (h) would apply to all

disclosure devices including, as discussed above, a request pursuant to new subdivision (d)(1).

Rule 3102(c)

The requirement as to the recording of depositions and documents obtained for an action involving title to real property would be deleted. The Committee believes that the inconvenience of such recording and the possibility that it might create an unjustified cloud on title to property outweigh what little benefit such recording might have in alerting title searchers to any claim involving title to the property in question.

Section 3103(a)

Subdivision (a) would be amended to make it clear that any person who is the subject of a discovery request, whether or not a party or a witness, is entitled to move for a protective order.

Rule 3106

Subdivision (a)

Subdivision (a) would be amended for purposes of clarification and consistency with its judicial interpretation. *See, e.g., Kraft v. Trustees of Sailors' Snug Harbor*, 31 A.D.2d 918 (1st Dept., 1969).

Subdivision (d)

New subdivision (d) is intended to prevent the needless delay and expense which occurs when a person other than a natural person produces for deposition an individual lacking relevant knowledge. An inappropriate designation of an individual to be deposed would be subject to a motion for a protective order under Section 3103. The term "person" used in this subdivision would include, in addition to a natural person, any entity legally recognized as a person, such as a corporation, partnership or association.

Rule 3108

The taking of a deposition upon written questions is an inexpensive method of conducting discovery and may be appropriate in a number of situations not recognized by Rule 3108 in its existing form. The proposed amendment would eliminate the "undesirable" limitations on the taking of a deposition upon written questions. *See* 3A Weinstein, Korn & Miller N.Y. Civ. Prac. ¶¶ 3108.02, 3108.03.

Rule 3109(a)

The time currently permitted under Rule 3190(a) for serving written questions does not allow for adequate preparation. The amendment would conform Rule 3109(a) with the federal practice pursuant to Fed. R. Civ. P. 31(a). The Court would in any event have power to enlarge or shorten the time for serving written questions.

Rule 3113(a)(2)

The amendment would eliminate a formal discrepancy between federal and state practice created by the 1980 amendment to Fed. R. Civ. P. 28(a).

Rule 3116(a)

The amendment would in effect extend the 1978 amendment of subdivision (a) to eliminate the requirement that a deposition be signed by the officer before whom it was taken if the witness fails or refuses to sign it. The requirement, which is inconvenient to comply with if the officer is not readily located, serves no significant purpose, since the officer must in any event rely upon representations or statements of a party or the witness as to the fact that the latter failed or refused to sign the deposition and the reasons therefor.

Rule 3120(a)

The purpose of the requirement in Rule 3120 that a party designate the items he seeks to inspect should be to enable the party served with the notice to determine what items are requested and to enable the court to determine whether the requested items have been produced. *Cf.* 8 Wright & Miller, *Federal Practice and Procedure* §2211 at 631. The present requirement that the requested items be "specifically" designated lends itself to a restrictive interpretation under which technical defects may frustrate reasonable discovery requests. In addition, a party frequently must conduct a deposition in order to obtain the information enabling him to designate the requested items with the required specificity. *See, e.g., King v. Morris*, 57 A.D.2d 530 (1st Dept. 1977). This result has been justified on the theory that the deposition may be necessary for proper resolution of objections to the discovery request. *Rios v. Donovan*, 21 A.D.2d 409, 413-14 (1st Dept. 1964). The Committee believes that a party who can reasonably identify a requested item or category of items should not need to conduct a deposition in order to establish the existence and specific identities of the requested items. In most instances, the Committee believes, pretrial discovery will be conducted more efficiently and effectively if a party can obtain materials for use in preparing for a deposition. If the party to whom the request is made objects on the ground that it is unduly burdensome, includes materials which are not discoverable, or is improper in some similar respect, the party should state the objections pursuant to Rule 3122 "rather than seeking shelter behind a claim of insufficient designation." 8 Wright & Miller, *supra*, at 634. Subdivision (a)(2) would also be amended to ensure that the party served with a notice has at least twenty days to respond to the discovery request or to prepare to comply with it.

Section 3121(a)

Subdivision (a) would be amended to ensure that the person to be examined has at least twenty days to respond to the request for examination.

Rule 3122

The amendment of Rule 3122 is intended to reduce the volume of motion practice arising out of discovery by eliminating the requirement that objections to requests for production of documents or other things or for physical or mental examinations be made by motion. The Committee believes that the notice procedure required by the amendment would encourage parties to resolve disputes concerning such requests without court intervention. In the event that a dispute is not so resolved, the party seeking discovery may move for an order compelling discovery pursuant to the proposed new Section 3124.

The proposed amendment to Rule 3122 would also enlarge the time for objecting to a discovery request.

Section 3123(a)

By disposing of issues which are not a genuine subject of dispute, the request for an admission serves to eliminate unnecessary expenses and complications. The deletion of the clause "at the trial" in the first sentence of subdivision (a) would make it clear that a request for an admission may be used even if the parties contemplate settlement rather than trial or where the issue as to which an admission is sought is one which is relevant to the case but not expected to arise at trial, such as an issue raised by pretrial motions, including motions relating to discovery. The clause inserted in the first sentence of subdivision (a) is intended to improve the usefulness of requests for an admission by preventing a party from routinely denying a request on the ground of lack of knowledge when the information needed to form a definitive response is available with reasonable effort.

Rule 3124

The text of what is now Rule 3124 would be revised to achieve greater clarity and simplicity and to delete the requirement that a person move for a protective order in order to preserve objections to a discovery request. This should encourage parties to resolve disputes over discovery matters on their own without resort to the Court and should also serve to narrow the scope of motions regarding discovery matters, since ordinarily the motion would be made as a motion to compel discovery after the person from whom discovery was sought had complied with so much of the discovery request as to which no objection was raised.

The reference to the right of a party to obtain local remedies for failure to comply with a discovery request would be deleted as unnecessary; the Committee does not intend to suggest that Section 3124 preempts other applicable law.

Section 3126

The words "failure" and "fails" would be substituted

for "refusal" and "refuses" in order to obtain stylistic conformity within Section 3126 and with proposed new Section 3124. The amendment would also make it clear that failure to comply with a court order, even if not willful, may in appropriate circumstances be grounds for imposing one or more of the enumerated sanctions. The substitution of the clause "this article" for "notice duly served" would make it clear that a willful failure to disclose information within the meaning of Section 3126 includes a willful failure to amend or supplement a response to a discovery request as required under new subdivision (h) of section 3101.

Section 3127

The only practical way of reducing the volume of motion practice over discovery matters is to require those who are responsible for improper discovery requests or improper objections to or noncompliance with discovery requests to compensate their adversaries for the costs and expenses of obtaining appropriate relief from the Court. The purpose of new Section 3127 would be to make the awarding of costs and expenses, including attorney's fees, the rule rather than the exception. The Court would have discretionary power to direct submission of affidavits or to hold a hearing on the amount of attorney's fees to be awarded.

Section 3130

Section 3130 would be amended to delete a clause which, as was noted when it was added in 1979, *see*, 3A Weinstein, Korn & Miller N.Y. Civ. Prac. ¶3130.02, perpetuates an unjustified distinction between negligence and wrongful death actions and other types of actions.

Rule 3132

The first sentence of Rule 3132 would be deleted as an unnecessary repetition of the first sentence of Section 3130. The prescriptive period during which a plaintiff may not serve interrogatories upon a defendant would be revised to parallel the amendment of Rule 3106. The amendment would also delete, as an unnecessary formality, the requirement that a defendant obtain leave of court in order to serve interrogatories upon the plaintiff within five days of service of the summons and complaint, and would conform Rule 3132 to Rule 3106 by removing the clause permitting a party to obtain special priority through an *ex parte* motion.

Rule 3133

The amendment of Rule 3133 would amend and consolidate Rules 3133 and 3134. Paralleling the proposed amendment of Rule 3122, subdivision (a) of Rule 3133 would be amended to eliminate the requirement that an objection to an interrogatory be made by motion. Subdivision (b) of Rule 3133 would be deleted as unnecessary in light of the amendment of subdivision (a).

Rule 3134

Rule 3134 would be deleted since its provisions would be incorporated into the amended Rule 3133.

Section 3140

Section 3140 would be amended to correct a misspelling in the caption and to clarify that the responsibility for making procedural rules governing the exchange of appraisal reports is vested in the Chief Administrator of the Courts in conformity with Judiciary Law, section 212(2)(d). This amendment also is in furtherance of one of the major purposes of this measure, the assurance of greater statewide uniformity in respect to disclosure procedures.

Part III - Additional 1983 Recommendations*

1. CPLR 308; 3125(e), (f).

The Committee recommends the repeal of the last paragraph (the paragraph which carries no number) of CPLR 308, in relation to additional notice in certain cases before a default judgment is taken, and the transfer of the substance of the provision, expanded and clarified, into CPLR 3215.

Recommendation

AN ACT

To amend the civil practice law and rules, in relation to additional notice of default judgment in an action arising out of a consumer credit transaction and to repeal certain provisions thereof relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The last unnumbered paragraph of section three hundred eight of the civil practice law and rules, is REPEALED.

§2. Subdivision (e) of section thirty-two hundred fifteen of such law and rules, as amended by chapter three hundred forty-four of the laws of nineteen hundred seventy-seven, is amended to read as follows:

(e) Proof. On any application for judgment by default, the applicant shall file proof of service of the summons and the complaint, or a summons and notice served pursuant to subdivision (b) of rule 305 or subdivision (a) of rule 316, and proof by affidavit made by the party of the facts constituting the claim, the default and the amount due. Where a verified complaint has been served it may be used as the affidavit of the

facts constituting the claim and the amount due; in such case, an affidavit as to the default shall be made by the party or his attorney. When jurisdiction is based on an attachment of property, the affidavit must state that an order of attachment granted in the action has been levied on the property of the defendant, describe the property and state its value. Proof of mailing the notice required by [section three hundred eight of the civil practice law and rules] subdivision (f), where applicable, shall also be filed [where such notice is required].

§3. Subdivision (f) of section thirty-two hundred fifteen of such law and rules, as amended by chapter seven hundred twenty of the laws of nineteen hundred sixty-eight, is amended by adding a new paragraph three to read as follows:

3. (i) When a default judgment based upon nonappearance is sought against a natural person in an action arising out of a consumer credit transaction, as defined in subdivision (f) of section 105, an affidavit shall be submitted that additional notice has been given by or on behalf of the plaintiff at least twenty days before the entry of such judgment, by mailing a copy of the summons by first-class mail to the defendant at his place of residence in an envelope bearing the legend "personal and confidential" and not indicating on the outside of the envelope that the communication is from an attorney or concerns an alleged debt. In the event such mailing is returned as undeliverable by the post office before the entry of a default judgment, or if the place of residence of the defendant is unknown, a copy of the summons shall then be mailed in the same manner to the defendant at the defendant's place of employment if known; if neither the place of residence nor the place of employment of the defendant is known, then the mailing shall be to the defendant at his last known residence.

(ii) The additional notice may be mailed simultaneously with or after service of the summons on the defendant. An affidavit of mailing pursuant to this paragraph shall be executed by the person mailing the notice and shall be filed with the judgment. Where there has been compliance with the requirements of this paragraph, failure of the defendant to receive the additional notice shall not preclude the entry of default judgment.

(iii) This requirement shall not apply to cases in the small claims part of any court or to any summary proceeding to recover possession of real property or to actions affecting title to real property.

§4. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law.

*NOTE: Contained herein are only those additional amendments initiated by the Committee, or acted upon by the Committee after outside request. Committee input lies behind other bills, usually in a consultative capacity.

NOTE: The last undesignated paragraph of CPLR 308, to be repealed by this bill, relates to the additional notice required to take a default judgment in an action against a natural person based upon nonpayment of a contractual obligation. New proposed paragraph 3 of subdivision (f) of CPLR 3215 governs the additional notice requirement in consumer credit transactions, and supersedes the repealed provision.

Comment

This proposal would clarify, improve and relocate the CPLR provisions which mandate that a notice of default judgment, in addition to that contained in a summons, be served on a defendant who is a natural person in an action arising out of a consumer credit transaction.

The proposal would repeal the unnumbered last paragraph of CPLR 308 and transfer its contents to CPLR 3215(f) as a paragraph 3. Since the purpose of this provision is solely to assure that an additional notice will be given to the defendant before a default judgment may be taken, the proper place for it is in the default judgment provision, CPLR 3215.

The proposal does not alter in any essential aspect the protection against sewer service which the present law, enacted by Chapter 344 of the Laws of 1977, provides.

The language of the 1977 legislation, although salutary in intent, has given rise to technical problems. This procedure would be improved by the recommended changes as follows:

1. The application of the provision to actions for nonpayment of a contractual obligation would be changed to those arising out of a consumer credit transaction. This change is consistent with the purpose of the provision to protect against sewer service, which is rare in contract actions except those arising from consumer credit transactions.

2. Actions affecting title to real property would be excepted. Title companies are justly apprehensive that, in such actions, the requirement to give additional notice could be troublesome in that inadvertent failure to do so allows vacatur of the default judgment, thus generating challenges to title many years after entry of judgment.

3. In conformance with general practice, provision would be made for service of the additional notice by the employee of an attorney, as well as by the party or his attorney, as at present.

4. It would be clear that the additional notice may be mailed out, not only after, but also simultaneously with service of process.

5. Where there has been compliance with the additional notice requirements, failure of the defendant to receive such notice shall not preclude entry of, or invalidate, the default judgment. Without this provision, the plaintiff would be penalized unfairly by being prevented

from obtaining a judgment where it is impossible to serve the additional notice on the defendant.

The proposal was submitted in 1979, 1980, 1981 and 1982. Last minute language changes in 1979 (re-embodying in the 1980 draft) resulted in a delay in 1979, and in 1980 the amendment, along with several other procedural changes, was not reached on legislative dockets. In 1981, the bill passed the Assembly but not the Senate, and in 1982 it passed the Senate but not the Assembly. No policy objections to the bill have been made known to the Advisory Committee on Civil Practice.

2. CPLR 2004, 105

The Committee recommends that CPLR 2004, which governs extensions of time generally, be amended to include the provision that the court may consider law office failure in determining whether good cause has been shown to extend the time duly fixed for doing any act, and that a concurrent amendment be made in CPLR 105 in respect to excusable defaults.

Recommendation

AN ACT

To Amend the civil practice law and rules, in relation to excusable default and extension of time

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section one hundred five of the civil practice law and rules, as amended by chapter nine hundred twenty-four of the laws of nineteen hundred seventy-four, is hereby amended by adding thereto a new subdivision, to be subdivision (t), to read as follows:

(t) *Excusable default.* "Excusable default" may include a default attributable, in whole or in part, to law office failure.

§2. Section twenty-four of such law and rules is hereby amended to read as follows:

§2004. Extensions of time generally. Except where otherwise expressly prescribed by law, the court may extend the time fixed by any statute, rule or order for doing any act, upon such terms as may be just and upon good cause shown, whether the application for extension is made before or after the expiration of the time fixed. *In determining whether good cause has been shown, the court may consider law office failure.*

§3. This act shall take effect immediately.

The amendment is designed to change New York law in respect to the legal effect of law office failure, in light of the New York Court of Appeals decisions in *Barasch v. Micucci*, 49 N.Y.2d 594, 427 N.Y.S.2d 732 (1980), and *Eaton v. Equitable Life Assurance Society of the U.S.*, 56 N.Y.2d 900, 453 N.Y.S.2d 404 (1982). The first held that law office failures are unavailable as a matter of law as excuse for a plaintiff's failure to serve a complaint pursuant to demand (CPLR 3012(b)), and the second extended that rule to a defendant's failure to serve a timely answer, thus mandating default judgments when the reasons for the pleading delay are traceable to omissions or oversights in the operation of a law office. See also, *Q.P.I. Restaurants, Ltd. v. Slevin*, 58 N.Y.2d 769, NYLJ, p.6, c.1, Dec. 20, 1982, where it was held an abuse of discretion as a matter of law for a court to conditionally vacate a default judgment against defendants for failure to answer when the only excuse was law office failure.

Barasch and *Eaton* have had a serious impact on practice, and are being applied by the trial courts and the appellate divisions rigidly, since discretion appears to be absolutely divested when law office failure is given as the reason for pleading delays. Without discretion all flexibility is lost: there are no tools for distinguishing between a delay of a few days and a delay of several weeks or months, between a case with great merit and one with little or none, between oversights inevitable in any human operation and oversights the products of indifference or gross neglect. The Advisory Committee on Civil Practice has kept abreast of the numerous cases decided over the past two and a half years, implementing *Barasch* and then *Barasch* and *Eaton*, and believes that it is best that these matters be restored to judicial discretion. The Committee by no means wishes to encourage negligence or dilatory conduct on the part of counsel, but sees ample power in the courts to deter such conduct without requiring what amounts to an automatic default in every such case. The courts can, and in the Committee's view should, invoke their equitable powers to condition the forgiving of defaults on the defaulter's payment of costs and a court-set attorney's fee to the side delayed. The Committee would go further, and encourage the judges to set financial sanctions great enough to discourage all delay. See, e.g., *Cockfield v. Apotheker*, 81 A.D.2d 651, 438 N.Y.S.2d 379 (2d Dept. 1981).

Imposing substantial sanctions on the party or attorney guilty of dilatory conduct punishes wrongful conduct without going to extremes. The Committee views the imposition of an automatic default as sometimes constituting an extreme and singular measure carrying punishment beyond the crime and excluding individual factors from judicial consideration. The alternative of a money sanction can tailor the remedy to the individual case and weigh all relevant factors.

The Committee suggests that CPLR 2004 be amended so as to make the proposed change applicable to all of the procedures to which the "law office failure" rule of *Barasch* and *Eaton* has been applied. The rule began in *Barasch* with application to only the failure of a plaintiff to serve a complaint (CPLR 3012(b)). It was extended in *Eaton* to the defendant's failure to serve an answer. Meanwhile, the trial courts and appellate divisions have construed it as applicable to other fundamental litigation steps that involve a time element. Hence the rule has been applied to bill of particulars omissions, to neglects to prosecute during the action (after the service of pleadings), and even to motions to restore a case to a calendar from which it was stricken for failure to answer a calendar call. See Siegel, *New York Practice*, §231 (81/82 Supp.).

From a vantage point in CPLR 2004, which governs the court's general power to extend the time for litigation steps, the amendment will clarify that in no procedure need a delay be deemed inexcusable solely because the reasons cited for it qualify as "law office failure".

There is no precise definition of what qualifies as "law office failure". If anything, there is an abundance of definitions, each case applying *Barasch* and *Eaton* holding in effect that the excuse tendered is such a failure. The Committee sees no need to offer a definition here. The restoration of discretion will permit every factor, whether it qualifies as a law office element or not, to be weighed along with all others. For example, one significant factor is whether granting an extension to a party would be prejudicial to other parties to the action.

A time extension under CPLR 2004 can be sought and granted even after the time for the taking of the particular step has expired. The Committee would emphasize this. Were this "default-opening" power not already part of CPLR 2004, an amendment to put it there would be part of this proposal. The flexibility sought by this amendment would be lost if CPLR 2004's time-extending powers were not applicable after as well as before the expiration of a CPLR time period.

To seal the point that the court can consider law office failures even in conjunction with applications to vacate default judgments already rendered, the Committee has adopted the suggestion of the Association of Supreme Court Justices that a definition be added to CPLR 105 (the definitions section of the CPLR) clarifying that the term "excusable default", as used in such provisions as CPLR 5015(a)(1) (motion to vacate default judgment), includes a default occurring because of a law office failure. This would prevent a construction that might otherwise deny the benefits of the CPLR 2004 amendment to the CPLR 5015(a)(1) and like motions.

These amendments should also obviate dependence on the decision in *A & J Concrete Corp. v. Arker*, 54 N.Y.2d 870, 444 N.Y.S.2d 905 (1981), which holds that judicial discretion is "somewhat broader" when the party in default moves for an extension of time under CPLR 2004 before the other side has applied to take the default. This has led to races, and sometimes madcap races, to the courthouse by A to obtain an extension of time before B applies for a default, and by B to get the default before A moves for the extension. There have even been cases showing the two sides moving on the same day, such as in *Rossman v. Brownstein*, 91 A.D.2d 1157, 458 N.Y.S.2d 741 (3d Dept., Jan 27, 1983), in which the court, whatever its own views, refused to excuse the default because "constrained" to that result by the *Barasch* and *Eaton* rule. The present amendments should lift those constraints.

The Advisory Committee believes that liberality in excusing non-prejudicial defaults accords with the general spirit that permeates the CPLR (*see, e.g.*, CPLR 104, 2001, 3025(b), 3216).

3. CPLR 3041, 3042

The Committee recommends the amendment of CPLR 3041 and CPLR 3042, to streamline the procedures governing the use of bills of particulars, reduce motion practice and curb several widespread abuses of present procedures.

Recommendation

AN ACT

To Amend the civil practice law and rules, in relation to bills of particulars

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section thirty hundred forty-one of the civil practice law and rules is amended to read as follows:

Section 3041. Bill of particulars in any case. Any party may require any other party to give a bill of particulars of [his] *such party's* claim, or a copy of the items of the account alleged in a pleading. *As used in this article, the term "bill of particulars" shall include "copy of the items of an account" wherever appropriate.*

Section 2. Rule thirty hundred forty-two of such law and rules, as separately amended by chapters two hundred ninety-six and two hundred ninety-seven of the laws of nineteen hundred seventy-eight, is amended to read as follows:

R. 3042. Procedure for bill of particulars. (a) [Notice] *Demand*. A [request] *demand* for a bill of particulars [or a copy of the items of an account] shall be made by serving a written [notice] *demand* stating

the items concerning which [such] *the* particulars are desired. [If the party upon whom such notice is served is unwilling to give such particulars, in whole or in part, he may] *The party served with the demand, within thirty days of the service thereof, shall serve a bill of particulars complying with the demand, or move to vacate or modify [such notice within ten days after receipt thereof. The notice or supporting papers shall specify clearly] the demand, specifying the objections and the ground therefor. A party moving to modify the demand shall attach to the moving papers a copy of the proposed bill, complying with the items not objected to.*

(b) Motion. Instead of proceeding by demand, [the] a party may move for a bill of particulars [, or copy of the items of account] in the first instance.

(c) Preclusion for failure to supply bill. [In the event that [If a party fails *timely* to furnish a bill of particulars [, or copy of the items of an account the court, upon notice, may preclude him from giving evidence at the trial of the items for which particulars have not been delivered] or to move to vacate or modify the demand, the demanding party may serve a written notice of preclusion by personal delivery or by registered or certified mail requesting that the demand be complied with within thirty days after service of the notice. The notice shall refer to this rule and shall state that if the party fails to comply therewith the party shall be automatically precluded without an application to the court. If the party served with the notice fails, within thirty days after service thereof, to furnish a bill, the party shall be precluded from giving evidence at trial of the particulars not furnished.

(d) *Relief from automatic preclusion. A party precluded under subdivision (c) of this rule may move to vacate the default within sixty days after service of the notice of preclusion, upon a showing of justifiable excuse for the default, and submission of an affidavit of merits and the proposed bill.*

[(d)](e) Preclusion for a defective bill. Where a bill [of particulars, or copy of the items of an account,] is [regarded as] defective or insufficient [by the party upon whom it is served], the court, upon [notice] *motion*, may [make an] order [of] preclusion or [directing] *direct* the service of a further bill. In the absence of special circumstances, a motion for such relief shall be made within [ten] *thirty* days after [the] receipt of the bill claimed to be *defective or* insufficient.

[(e)](e) Conditional order of preclusion. A preclusion order may provide that it will be effective unless a prior bill is served within a specified time.]

[(f)](f) Affidavits. Affidavits to be used in support of or in opposition to a motion under this rule may be made by a party or his attorney.]

[(g)](f) Amendment. In any action or proceeding in a court in which a note of issue is required to be filed, a party may amend [his] *the* bill of particulars once as of course [before trial.] prior to the filing of a note of issue.

[(h)](g) Costs. Upon any motion, except under subdivision (b), costs may be imposed.

Section 3. This act shall take effect on the first day of January next succeeding the date on which it shall have become law.

Comment

The proposed amendment of CPLR 3041 and CPLR 3042 is designed to save the time of courts and litigants, to curtail pronounced and widespread abuses which have arisen under present law, and otherwise to improve this extensively used tool. The Committee was aided in its endeavors by the Honorable William P. McCooe, Justice of the Supreme Court, who, as consultant to the Committee on this project, helped prepare the original draft, and assisted the Committee in reaching a final proposal.

Under the present provisions of CPLR 3042, many attorneys serve a bill of particulars only after being served with a conditional order of preclusion. Initial requests for bills of particulars routinely are ignored. Some attorneys routinely serve demands that are so prolix and burdensome as to effectively harass opponents. Still other attorneys routinely serve patently defective bills.

The courts are inundated with motions to preclude for failure timely to serve bills of particulars, and with motions relating to disclosure generally. During 1980, for example, Special Term, Part 1-A, of the Supreme Court in New York County, processed 25,242 motions relating to bills of particulars, disclosure, and statements of readiness. Motions relating to bills of particulars are adjourned frequently, and the final determination is generally a conditional order of preclusion which may or may not be obeyed. This practice wastes judicial resources and burdens litigants.

The language of CPLR 3042 is streamlined by making a minor amendment to CPLR 3041. "Bill of particulars" is defined to include "items of an account or a copy thereof," thus eliminating the need for numerous references in CPLR 3042 to items of an account.

The following are contained in CPLR 3042:

Subdivision (a) of CPLR 3042 would be amended to establish as a general rule that a party served with a demand for a bill of particulars, within thirty days after service of the demand, must serve a bill of particulars complying with the demand, or move to vacate or modify the demand, specifying the objections and the grounds therefor. A party moving to modify the

demand would be required to attach to the moving papers a copy of the proposed bill, complying with the items to which there is no objection. If the party served takes no action within the prescribed time, the demanding party would be authorized to put the defaulting party on written notice that the bill has not been served and that an automatic preclusion will take effect thirty days after service of the notice if the bill is not received. The written notice must be served by personal delivery or by registered or certified mail. Additionally, the notice is required to refer to this Rule so that the defaulting party may be alerted to the statutory sanction for default in serving the bill.

This notice and automatic preclusion procedure, which is provided for in amended subdivision (c), and is new, is the principal difference between the proposed Rule 3042 and present Rule 3042.

A party who is unable to comply with the demand should move in a timely manner under subdivision (a) to prevent the imposition of any sanction. A party would not be permitted to move to vacate or modify a demand after receipt of the preclusion notice but may move to vacate the default within 60 days after service of the notice of preclusion. Such relief could be afforded only upon a showing of justifiable excuse for the default, the submission of an affidavit of merits and the proposed bill of particulars. Relief from automatic preclusion would be governed by a new subdivision (d).

Subdivision (b), which allows a party seeking a bill of particulars to proceed by motion instead of demand, is retained, although it seldom is utilized. There may be some circumstances in which proceeding by motion initially is appropriate.

Present subdivision (d) governing preclusion for a defective bill is retained with some revision as new subdivision (e).

Present subdivision (e), governing the conditional order of preclusion, is deleted since that procedure is superseded by this revision. Present subdivision (f), governing affidavits, is eliminated as unnecessary because general rules governing motions and affidavits are adequate and because an affidavit of merits, to be required by new subdivision (d), should be made by a party, not an attorney.

Present subdivision (g) (amendment) would be redesignated as new subdivision (f) and slightly reworded for the sake of clarification.

Present subdivision (h) (costs) would be redesignated as new subdivision (g).

Nothing in the revision of this Rule precludes parties or their attorneys from extending by written stipulation the time for serving any notice, motion or bill of particulars.

The extension of time to 30 days for complying with a demand, together with the potential for sanctions,

should substantially reduce the number of motions required in respect to bills of particulars, and significantly improve the administration of justice.

Revision of Rule 3042 also provides an opportunity to make minor grammatical and technical changes in the wording of various provisions. These changes are not intended to have any substantive effect.

4. CPLR 3222(b)(1); 6001

The Committee proposes to amend CPLR 3222(b)(1) and CPLR 6001, to strike cross-references therein to the provisional remedy of arrest, thereby conforming these provisions to Chapter 409 of the Laws of 1979, which abolish the provisional remedy.

Recommendation

AN ACT

To Amend the civil practice law and rules, in relation to civil arrest

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph one of subdivision (b) of rule thirty-two hundred twenty-two of the civil practice law and rules is amended to read as follows:

1. an order of [arrest or] attachment or a preliminary injunction shall not be granted;

§2. Section sixty hundred one of such law and rules is amended to read as follows:

§6001. Kinds of provisional remedies; when remedy available to defendant. The provisional remedies are [arrest,] attachment, injunction, receivership and notice of pendency. On a motion for a provisional remedy, the plaintiff shall state whether any other provisional remedy has been secured or sought in the same action against the same defendant, and the court may require the plaintiff to elect between those remedies to which he would otherwise be entitled; for this purpose, seizure of a chattel in an action to recover a chattel is a provisional remedy. A cause of action contained in a counterclaim or a cross-claim, and a judgment demanded thereon, shall entitle the defendant to the same provisional remedies to which he would be entitled if he were the plaintiff, the party against whom the judgment is demanded were the defendant and the cause of action were contained in a complaint.

§3. This act shall take effect immediately.

Comment

The Legislature abolished the provisional remedy of civil arrest in 1979, by repealing Article 61 of the CPLR. The amendments of CPLR 3222(b)(1) and CPLR 6001 are proposed merely to conform these sections to reflect the 1979 repeal of the provisional remedy of civil arrest. CPLR 3222(b)(1), governing the submission on agreed facts (a procedure which dispenses with summons service and other adversary proceedings), makes certain provisional remedies unavailable. Arrest was among them, but since arrest no longer exists as a remedy, the reference to it should be eliminated.

CPLR 6001 lists the official provisional remedies. It still refers to arrest. The amendment would strike the reference.

5. CPLR 5250*

The Committee recommends the repeal of CPLR 5250, to abolish the remedy of civil arrest in connection with the enforcement of money judgments, in light of the abolition of the analogous provisional remedy of civil arrest by Chapter 409 of the Laws of 1979.

Recommendation

AN ACT

To Amend the civil practice law and rules, in relation to repeal of section fifty-two hundred fifty thereof, relating to civil arrest

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section fifty-two hundred fifty of the civil practice law and rules is REPEALED.

§2. This act shall take effect immediately.

Comment

This proposal would repeal section 5250 of the CPLR to abolish the remedy of civil arrest in connection with the enforcement of money judgments. Since the remedy of civil arrest in connection with the enforcement of money judgments, provided for by CPLR 5250, is analogous to the provisional remedy of civil arrest abolished by Chapter 409 of the Laws of 1979, similar policy considerations militate towards its abolition. In addition, repeal of CPLR 5250 would have a negligible impact on civil practice in this state, since the arrest which it authorizes is infrequently sought and rarely, if ever, granted. Finally, the Advisory Committee on Civil Practice believes that the provision is of doubtful constitutionality. See *Deary v. Guardian Loan Co., Inc.*, 534 F.Supp. 1178 (S.D.N.Y. 1982).

*REPEAL NOTE. - CPLR 5250, proposed to be repealed by this act, relates to the civil arrest of judgment debtors.

6. CPLR 5601(a)

The Advisory Committee once again recommends that appeals to the Court of Appeals *as of right* be curtailed, so that appeals to the state's highest Court *by permission* may be expanded, enabling the Court to decide more significant issues of law and to facilitate the Court's control of its calendar. The specific statutory amendment that the Committee will recommend during the 1983 session has not yet been formulated.

Recommendation

In 1982 and for several years prior thereto, the Advisory Committee recommended the following legislation:

AN ACT

To Amend the civil practice law and rules, in relation to appeals to the court of appeals as of right

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision (a) of section fifty-six hundred one of the civil practice law and rules, as amended by chapter ninety-five of the laws of nineteen hundred seventy-three, is amended to read as follows:

(a) [Dissent, reversal or modification] *Dissent by two justices.* An appeal may be taken to the court of appeals as of right in an action originating in the supreme court, a county court, a surrogate's court, the family court, the court of claims or an administrative agency, from an order of the appellate division which finally determines the action, where [(i) there is a] *two justices* dissent on a question of law in favor of the party taking such appeal [, or (ii) such order directs a reversal of the judgment or order appealed from, or (iii) such order directs a modification thereof in a substantial respect, which is within the power of the court of appeals to review on such appeal, and the party taking the appeal is aggrieved by the modification].

§2. This act shall apply to every notice of appeal to the court of appeals otherwise timely served within the particular action or proceeding, which is served on or after the effective date of this act.

§3. This act shall take effect on the first day of January next succeeding the date on which it shall have become law.

The 1982 amendment would have narrowed the existing bases for appeal as of right only under subdivision (a) of section 5601 of the CPLR and indirectly under subdivision (d) of that section. Thus, appeals as of right from final orders involving reversals, modifications and dissents are preserved, except that in all those categories there would have to be at least two dissenting votes at the Appellate Division. Of course, all such matters not appealable as of right would be subject to appeal by

permission of either the Appellate Division or the Court of Appeals (CPLR 5602).

This appears to be the minimal statutory change needed to permit the Court of Appeals to deal more effectively with its burgeoning workload, to ensure the currency of its calendar, to permit more time and opportunity for deliberation and for writing opinions on those appeals which are highly significant and to grant more applications for leave to appeal in cases of truly statewide importance and significance.

The recent report entitled *Appellate Justice in New York*, by Robert MacCrate, Esq., Honorable James D. Hopkins and Professor Maurice Rosenberg, sponsored by the American Judicature Society, is being studied by the Advisory Committee. Statistics quoted in that report show that the total caseload of the Court of Appeals has been increasing steadily over the past five decades, from 1096 cases in 1933 to 3295 in 1980.

The statistical analysis of the work of the Court which the Committee has been reviewing over the last several years has indicated that the appeals that reach the Court of Appeals by leave are more often reversed or modified than the appeals mandated by right, clearly indicating the urgency of enabling the Court of Appeals to grant leave to appeal in more deserving civil cases without being overwhelmed by numerous less meritorious appeals as of right. Such determination and control of its own docket is, by and large, the national rule for courts of last resort and there is no reason for New York to be a minority exception to this sound jurisprudential practice.

A particularly burdensome type of appeal as of right to the Court of Appeals is the appeal based upon a reversal or modification by an Appellate Division of a trial court's determination. Many times the Appellate Division unanimously corrects a clear error in law by the trial court and there is no point in mandating further appeal. Yet, under present law, the Court of Appeals is required to consider such matters. Thus, errors by the trial courts, fully remedied by the Appellate Division, are allowed to clog the calendar of the State's highest court. Appeals as of right based upon the presence of a dissent also appear to be less often reversed or modified than appeals by leave.

The Advisory Committee intends to recommend specific legislation during the 1983 legislative session. Conceivably such legislation may be somewhat revised from that recommended during the last several years. The recommendation of the Committee will be made as soon as it has completed its review of the latest Court of Appeals caseload statistics and the analysis and recommendations of *Appellate Justice in New York*.

It remains clear that the sound administration of the courts as well as the interests of the bar and the public require that the obligatory jurisdiction of the Court of Appeals be curtailed so that its permissive jurisdiction may be expanded.

7. CPLR 6313(a).

The Committee recommends that CPLR 6313(a), governing temporary restraining orders, be amended to require that if no notice is directed, the court state on the face of the order why it is being dispensed with, thus encouraging the procedure of requiring notice even of a temporary restraining order except in exigent circumstances.

Recommendation

AN ACT

To Amend the civil practice law and rules, in relation to notice of motion for a temporary restraining order

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision (a) of section sixty-three hundred thirteen of the civil practice law and rules, as amended by chapter three hundred eighteen of the laws of nineteen hundred sixty-two, is amended to read as follows:

(a) Generally. If, on a motion for a preliminary injunction, the plaintiff shall show that immediate and irreparable injury, loss or damages will result unless the defendant is restrained before a hearing can be had, a temporary restraining order may be granted without notice. *If the circumstances are such that notice, even if only by telephone or other informal means, is practicable and would not defeat the purpose of the order, the court shall direct that it be given; and if the court finds otherwise, it shall state in the order the reasons for dispensing with notice.* Upon granting a temporary restraining order, the court shall set the hearing for the preliminary injunction at the earliest possible time. No temporary restraining order may be granted in an action arising out of a labor dispute as defined in section eight hundred seven of the labor law, nor against a public officer, board or municipal corporation of the state to restrain the performance of statutory duties.

§2. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law.

Comment

The Committee was asked to encourage judges to require notice of a temporary restraining order (TRO) in instances where it is feasible to give notice. The matter came before the Committee in 1979 but was put over until 1980 to obtain the advice and experience of a broad sampling of Supreme Court justices. (Since the TRO involves equity jurisdiction, it is almost exclusively a product of Supreme Court practice).

To obtain this sampling, the matter was placed on the agenda of the 1979 annual meeting of the state's

trial judges, then known as the "Crotonville Conference," where the judges related a range of experiences with the TRO.

The primary aim of the TRO is to retain the status quo while an application is brought on for a preliminary injunction. While that injunction (if granted) covers the whole pendency of the action until final judgment, the TRO covers only the period for bringing on the preliminary injunction hearing. Each instance of an application for a TRO is therefore one in which—at least to hear the applicant (assume it is the plaintiff) tell it—the urgency is too great to admit of any notice at all to the other side (assume it is the defendant). The experience of a majority of the judges suggests that while there is occasionally a showing of an exigency sufficient to dispense with notice of the TRO, many of the cases involve no such urgency and notice of the TRO, however informal, would not prejudice the applicant in any way. The Committee is of the view that if the giving of notice is feasible and appropriate, then as a matter of policy it should be given.

The amendment of CPLR 6313 therefore provides that if the giving of notice is practicable, it should be ordered. The court can require the giving of notice in whatever form it chooses. It is common among a number of judges now, for example, even under the present version of CPLR 6313, to require the applicant to give telephone notice to the other side, the judge often permitting his own phone in chambers to be used for the purpose.

There certainly are situations where the giving of notice would be undesirable. For example, where there is significant chance that the other side, upon being notified of the TRO application, will forthwith do the very thing the whole procedure is designed to prevent (immediately removing from the state a chattel which is at the crux of the action), notice should not be directed. The court must be convinced that the acts described are not just in the applicant's imagination ...but are a real possibility, before dispensing with notice, and it will of course be incumbent on the applicant to convince the court in affidavits accompanying the initial application for the TRO (whose usual context is an order to show cause, bringing on the preliminary injunction application).

If for any reason notice of the TRO is dispensed with, the court under this amendment must state on the face of the TRO "the reasons for dispensing with notice." It is the Committee's hope that it will become a matter of routine practice to give notice of a TRO and dispensing with notice will become the exception.

8. CPLR 7502(c).

The Committee proposes to add a subdivision to CPLR 7502 to authorize the court to permit, in conjunction with an arbitration, the provisional remedies of attachment and preliminary injunction.

AN ACT

To Amend the civil practice law and rules, in relation to use of provisional remedies in arbitration

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section seventy-five hundred two of the civil practice law and rules is hereby amended to read as follows:

§7502. Applications to the Court; venue; statutes of limitation; *provisional remedies*

(a) Applications to the court; venue. A special proceeding shall be used to bring before a court the first application arising out of an arbitration controversy which is not made by motion in a pending action. The proceeding shall be brought in the court and county specified in the agreement; or, if none be specified, in a court in the county in which one of the parties resides or is doing business, or, if there is no such county, in a court in any county; or in a court in the county in which the arbitration was held. All subsequent applications shall be made by motion in the pending action or the special proceeding.

(b) Limitation of time. If, at the time that a demand for arbitration was made or a notice of intention to arbitrate was served, the claim sought to be arbitrated would have been barred by limitation of time had it been asserted in a court of the state, a party may assert the limitation as a bar to the arbitration on an application to the court as provided in section 7503 or subdivision (b) of section 7511. The failure to assert such bar by such application shall not preclude its assertion before the arbitrators, who may, in their sole discretion, apply or not apply the bar. Except as provided in subdivision (b) of section 7511, such exercise of discretion by the arbitrators shall not be subject to review by a court on an application to confirm, vacate or modify the award.

(c) *Provisional remedies. The supreme court in the county in which an arbitration is pending, or, if not yet commenced, in a county specified in subdivision (a), may entertain an application for an order of attachment or for a preliminary injunction in connection with an arbitrable controversy, but only upon the ground that the award to which the applicant may be entitled may be rendered ineffectual without such provisional relief. The provisions of articles 62 and 63 of this act shall apply to the application, including those relating to undertakings and to the time for commencement of an action (arbitration shall be deemed an action for this purpose) if the application is made before commencement, except that the sole ground for the granting of the remedy shall be as stated above. The form of the application shall be as provided in subdivision (a).*

§2. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law.

Comment

The need often arises to protect the status quo while an arbitration is pending, just as it does when a litigation is pending. The availability of provisional remedies in conjunction with an arbitration has been a source of dispute under the CPLR, where arbitration is not considered a "special proceeding". Under the Civil Practice Act (§1459), which the CPLR superseded in 1963, an arbitration was treated as a special proceeding and, thus, there was less difficulty in permitting the use of provisional remedies in connection with arbitrations.

The Committee has been considering a proposal to authorize the court to entertain applications for the remedies of attachment (CPLR Article 62) and preliminary injunction (Article 63) when shown to be needed to preserve the efficacy of a potential arbitral award. The time seems ripe to present this proposal to the Legislature. A recent report by the Subcommittee on Provisional Remedies of the Committee on Arbitration of the Association of the Bar of the City of New York includes a survey of the area and recommends legislation to permit use of provisional remedies in arbitration proceedings.

The only provisional remedies made available by this proposal are attachment and preliminary injunction (which would of course include the temporary restraining order). The Receivership (Article 64) and *lis pendens* (Article 65) would not be available in connection with an arbitration. The sole ground for the grant of either an attachment or preliminary injunction, moreover, is that the award the applicant is seeking in arbitration "may be rendered ineffectual" without such relief.

The application for the authorized provisional remedies would be made to the Supreme Court. If the arbitration is pending when the application is made, it is made in the county of the arbitration's pendency. If the arbitration has not yet been commenced, the application would be made in a county specified in the existing subdivision (a) of CPLR 7502.

When an attachment is sought before an action is commenced, there is a requirement that the action be commenced within 60 days after the attachment is granted. CPLR 6213. The same requirement would apply to the commencement of the arbitration if the granting of the attachment precedes it. Also retained are the bonding requirements of Articles 62 and 63, so that a party obtaining the remedy in conjunction with an arbitration would not be relieved of any liabilities that might apply in a litigated case.

The Advisory Committee notes that there is no inconsistency between the proposed amendment and the recent decision of the Court of Appeals in *Cooper*

v. Ateliers de la Motobecane, S.A., 57 N.Y.2d 408 (1982), where a pre-arbitration attachment was disallowed in a matter involving international litigants governed by the United Nations Convention in Recognition and Enforcement of Foreign Arbitral Awards. The amendment would not affect proceedings governed by such international agreements. Moreover, the amendment, by providing the preliminary relief of attachment or injunction *only* if the arbitration award might otherwise be rendered ineffectual, is designed to make the domestic arbitration remedy more efficacious, and therefore, in the Committee's view, accords with the spirit of the *Cooper* decision.

Background and case illustrations which support the necessity for this amendment may be found in the cited report of the Subcommittee of the Association of the Bar's Arbitration Committee.

9. CPLR 7503(d).

The Committee recommends that a statute be enacted directing that the trial of issues of fact arising on an application to compel or stay an arbitration be without a jury.

Recommendation

AN ACT

To Amend the civil practice law and rules, in relation to the trial of issues of fact in respect to arbitration

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section seventy-five hundred three of the civil practice law and rules, as amended by chapter three hundred eighty-eight of the laws of nineteen hundred sixty-four, is amended by adding thereto a new subdivision, to be subdivision (d), to read as follows:

(d) Issues of fact. Issues of fact arising on an application under this section shall be tried by the court without a jury.

§2. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law.

Comment

The Committee makes this recommendation unanimously, but with decidedly mixed emotions.

The purpose of arbitration is to facilitate dispute resolution. It is not consistent with that purpose to permit one party to an ostensibly arbitrable dispute to delay the arbitral process by interposing objections to arbitration and then, if issues of fact are presented about whether an agreement to arbitrate was made, to insist that they be tried by jury. Additionally, of course, is the factor of the over-burdened calendars of the

courts, which are hardly helped by having to impanel juries to determine arbitrability questions. The Committee has often been asked to recommend a statute that would dispense with trial by jury of such issues.

The problem is one of constitutionality. Some of the Committee have serious reservations about whether a statute can dispense with a jury in trying such issues. They reason that if, absent any commitment to arbitrate, an ordinary action involving the dispute would be triable by jury (i.e., an action for money only), a genuine issue as to whether the dispute is to be taken away from the courts would also require a jury trial. Under this reasoning an arbitrability issue would be just such an issue.

An opposing view is that if a party has affixed his signature to an agreement containing an arbitration clause, he has established a sufficient link with an obligation to arbitrate to permit trial of the issue by the court without a jury.

An amendment of the state constitution to dispense expressly with trial by jury in such instances would be the best method of resolving this problem. But the amendment process is a cumbersome one. The Committee takes the position that the matter should not be pressed to the constitutional-amendment point until the Court of Appeals has at least had a chance to address the issue whether, under present law, the arbitrability question is triable by jury. While a statute dispensing with trial by jury of the question is not indispensable to set up a court test, it would surely be helpful. Hence, the Committee recommends the adoption of CPLR 7503(d), dispensing with trial by jury of the threshold question of arbitrability and other issues of fact and permitting these questions to be heard and resolved by the court.

Because of the Committee's reservations about constitutionality, a report addressed to the subject was undertaken by a Yale law student under the direction of Professor Geoffrey C. Hazard, Jr. The report, which appears at page 314 of the Judicial Conference's 1978 Annual Report, concludes that the Constitution does not bar the Legislature from requiring that trial of the arbitrability issue be by the court without a jury. The matter remains in doubt, and its submission to the courts is deemed the most appropriate step.

If the courts determine that trial by jury is required, and set CPLR 7503(d) aside as unconstitutional, the Committee will have performed what it considers to be its duty to help set the stage for the test.

10. CPLR 7804(g).

The Committee recommends that CPLR 7804(g) be amended to clarify which issues the Supreme Court is to decide at Special Term before directing that a case involving the substantial evidence test be transferred to an Appellate Division for determination.

Recommendation

AN ACT

To Amend the civil practice law and rules, in relation to the hearing and determination of article 78 proceedings

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision (g) of section seventy-eight hundred four of the civil practice law and rules is amended to read as follows:

(g) Hearing and determination; transfer to appellate division. Where [an] *the substantial evidence* issue specified in question four of section 7803 is not raised, the court in which the proceeding is commenced shall itself dispose of the issues in the proceeding. Where such an issue is raised, the court shall *first dispose of such other objections as could terminate the proceeding without reaching the substantial evidence issue. If the determination of the other objections does not terminate the proceeding, the court shall* make an order directing that [the proceeding] *it* be transferred for disposition to a term of the appellate division held within the judicial department embracing the county in which the proceeding was commenced [; the court may, however, itself pass on objections in point of law]. When the proceeding comes before it, whether by appeal or transfer, the appellate division shall dispose of all issues in the proceeding, or, if the papers are insufficient, it may remit the proceeding.

§2. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law.

Comment

CPLR 7804(g), which requires that an Article 78 proceeding involving the substantial evidence review criterion be transferred by the Supreme Court, where the proceeding is begun, to the Appellate Division, provides also that the Supreme Court "may ...itself pass on objections in point of law" before making the transfer. Just what questions are to be passed upon under this ambiguous criterion has been a subject of disagreement.

One of the soundest conclusions concerning the meaning of the phrase is that the Supreme Court should pass only on those objections that have the potential for terminating the case without reaching the substantial evidence question, i.e., objections that can dismiss the action and thus obviate a transfer. In 1979 the matter was discussed at the annual Crotonville Conference of Trial Judges and the judges agreed with the above conclusion.

Accordingly, the Committee recommends that Special Term pass only on those objections that can result in dismissal, i.e., lack of jurisdiction, statute of limitations,

and res judicata. If any such defense succeeds, the case would be dismissed and a transfer (and a reaching of the substantial evidence issue) would be unnecessary. If the defense fails, the case can then be transferred for determination of the substantial evidence issue by the Appellate Division, along with such other objections as did not have the potential for terminating the case, e.g., questions of admissibility of evidence by the agency, the following of proper administrative procedure, etc.

An alternative that the Committee rejected was the repeal of CPLR 7804(g), so that the Supreme Court would determine the substantial evidence question and the Appellate Division would review the question, if at all, only as part of an ordinary appeal. Since the substantial evidence rule is an adjunct of the old writ of certiorari, which applied only when it was sought to review a determination following a full-fledged "quasi-judicial" hearing (what the State Administrative Procedure Act denominates an "adjudicatory proceeding"), and since this phase of Article 78 carries forth that function, the procedure of leaving initial judicial review of the substantial evidence question to the Appellate Division should be retained. The premise underlying this procedure is that there has already been a plenary hearing before the agency, giving rise to a full record, and that a "substantial evidence" review of that record should go only to an appellate-level court. The Committee is of the view that the reason for "filtering" it through nisi prius, as CPLR 7804(g) does, is only to enable that court to determine other issues that may be raised and that can obviate disposition of the substantial evidence issue.

11. CPLR 8001(a).

The Committee proposes to raise the daily fee for a subpoenaed witness from \$2 to \$15, and the mileage fee payable to him from eight to 23 cents.

Recommendation

AN ACT

To Amend the civil practice law and rules, in relation to fees of witnesses

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision (a) of section eighty hundred one of the civil practice law and rules, is amended to read as follows:

(a) Persons subpoenaed. Any person [whom] *whose* attendance is compelled by a subpoena, whether or not actual testimony is taken, shall receive for each day's attendance [two] *fifteen* dollars for attendance fees and [eight] *twenty-three* cents as travel expenses for each mile to the place of attendance from the place where he was served, and return. There shall be no mileage fee for travel wholly within a city.

§2. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law.

Comment

This amendment is a measure that takes cognizance of inflation, and in the Committee's judgment a modest one. The witness fee of \$2 has for many years been inadequate. The figure of \$15 is at least a small step toward more realistic fees. Travel expenses have increased beyond the eight-to-23 cent jump here proposed, and this is true regardless of the mode of transportation used. The provision that dispenses with the mileage item when the travel is entirely within a city is not affected. The theory behind that exception is that public transportation is available at a modest charge, but that proposition will also bear monitoring in the future.

The increase being adopted here for the trial subpoena also will apply to the pretrial deposition subpoena. An additional \$3 remains applicable to that subpoena under subdivision (b) of CPLR 8001.

Through the adoptive provision of §610.50 of the Criminal Procedure Law, these increases in fees and mileage would apply in criminal as well as civil actions.

12. CPLR 8201-8204.

The Committee recommends the amendment of this quartet of sections to increase costs awarded in civil actions to recognize the accelerated inflation of recent years.

Recommendation

AN ACT

To Amend the civil practice law and rules, in relation to amount of costs in an action

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section eighty-two hundred one of the civil practice law and rules, as amended by chapters seven hundred thirty-four and seven hundred thirty-five of the laws of nineteen hundred seventy-two, is amended to read as follows:

§8201. Amount of costs in an action. Costs awarded in an action shall be in the amount of:

1. [fifty] *two hundred* dollars [in the counties within the city of New York, and twenty-five dollars in all other counties,] for all proceedings before a note of issue is filed; plus

2. [one] *two hundred* dollars [in the counties within the city of New York, and fifty dollars in all other counties,] for all proceedings after a note of issue is filed and before trial; plus

3. [one] *three* hundred [fifty] dollars [in the counties within the city of New York, and seventy-five dollars in all other counties,] for each trial, inquest or assessment of damages.

§2. Section eighty-two hundred two of such law and rules, as amended by chapters seven hundred thirty-four and seven hundred thirty-five of the laws of nineteen hundred seventy-two, is amended to read as follows:

§8202. Amount of costs on motion. Costs awarded on a motion shall be in an amount fixed by the court, not exceeding [forty] *one hundred* dollars [in counties within the city of New York, and twenty dollars in all other counties].

§3. Subdivision (a) of section eighty-two hundred three of such law and rules, as so designated by chapter three hundred ninety-one of the laws of nineteen hundred seventy-two, and as amended by chapter seven hundred thirty-five of the laws of nineteen hundred seventy-two, is amended to read as follows:

(a) Unless the court awards a lesser amount, costs awarded on an appeal to the appellate division shall be in the amount of |: 1. twenty-five dollars for all proceedings before argument; plus 2. fifty dollars for argument| *two hundred fifty* dollars.

§4. Section eighty-two hundred four of such law and rules, as amended by chapter seven hundred thirty-five of the laws of nineteen hundred seventy-two, is amended to read as follows:

§8204. Amount of costs on appeal to court of appeals. Unless the court awards a lesser amount, costs awarded on an appeal to the court of appeals shall be in the amount of |: 1. fifty dollars for all proceedings before argument; plus 2. seventy-five dollars for argument| *five hundred* dollars.

§5. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law; provided, however, that its provisions shall apply only to bills of costs entered on or after such date, regardless of when the claim accrued or the action was commenced.

Comment

What few adjustments have been made in the CPLR costs provisions have been infrequent and small. Costs have never been commensurate with the actual expense of litigating an action, but as the dollar has declined in value at an accelerated pace over recent years, the amounts provided have perhaps lost what little significance they had.

The Committee proposes to make an across-the-board increase in the amount of costs awardable for the various stages of an action (CPLR 8201), for a motion (CPLR 8202) and for appeals to the Appellate Division (CPLR 8203(a)) and the Court of Appeals (CPLR 8204).

With respect to costs awardable in an action, a distinction is presently made between New York City and elsewhere. The costs are awardable in stages under CPLR 8201, but the sums awardable in New York City counties are double those awardable in the other 57 counties. The proposal removes this distinction, so that the sums suggested would apply in all counties.

Costs awardable for proceedings before the filing of a note of issue are at present \$50 in New York City and \$25 elsewhere. The amendment of CPLR 8201(1) would change this amount to a uniform \$200. This may appear at first blush to be at least a quadrupling of the present figure. It is not, however, because this pre-note of issue segment of a case has until recent years involved little preparation. The practice was to file the note of issue early in the case, before the trouble and expense of disclosure and other pretrial proceedings were undertaken. In the present era of the certificate of readiness, however, which must accompany the note of issue, this first stage has become a busy and expensive one. This fact has never been recognized in a costs adjustment.

The second stage of litigation, which covers the period after the filing of the note of issue but before an actual trial, at present involves costs of \$100 in New York City and \$50 elsewhere; a uniform \$200 is substituted for statewide application under the proposed amendment of CPLR 8201(2). Steps one and two in litigation will now each carry costs of \$200.

The trial itself, should the case proceed that far, involves costs of \$150 in New York City and \$75 elsewhere at present. The proposed amendment of CPLR 8201(3) substitutes a uniform \$300 for this step statewide.

Under these proposals, should a case proceed to trial the total costs that could be recovered would be \$700 in a Supreme Court action, as opposed to the present total of \$300 in New York City and \$150 in other counties. If the jump seems at all dramatic, it is only because of continuing omissions over the years to have the costs provisions track the inflationary movement of the dollar.

A proposal to have costs for the trial stage progress on a per diem basis (the amount proposed was \$200 daily) was deferred by the Committee, not because it was unfair or unjust, but because it was deemed to be too radical in the context of the history of costs in New York.

Motion costs at present are a maximum of \$40 under CPLR 8202. The proposal would raise the maximum to \$100. Considering that this provision governs every category of motion, and that ordinarily even the most insignificant motion will entail time and effort ultimately costing each litigant well in excess of the \$100 maximum proposed, the figure was deemed a reasonable one.

It should be noted that CPLR 8202 governs only the amount of motion costs, if they are awarded. Whether to award costs, however, is covered in CPLR 8106, which leaves the matter to the court's discretion. A court's discretion could of course be exercised to award costs in a sum less than the \$100 maximum. Several members of the Committee expressed the view that a more liberal application of the costs sanction on motions might have the salutary effect of discouraging frivolous motions.

The sum of \$75 is the maximum award applicable at present on an appeal to the Appellate Division under CPLR 8203(a). The proposal raises this to \$250 and eliminates the two-stage award (one before and one after argument) in use at present.

The sum of \$125 is the present maximum for costs upon an appeal to the Court of Appeals under CPLR 8204. The proposal raises this to \$500, still far from any realistic appraisal of the appeal's actual cost but nonetheless a step forward. Again, the two-stage standard now applicable is abandoned.

The labors that went into a formulation of the costs proposals were largely those of one of the Committee's own members, William D. Eggers of Rochester, and the Committee wishes to acknowledge those efforts with thanks.

13. CCA §1809, UCCA §1809 UDCA §1809, UJCA §1809.

The Committee recommends that the New York City Civil Court Act §1809(2) and the analogous provisions in the three uniform court acts, which relate to the appearance of corporate defendants in small claims actions, be amended to permit any corporation to defend a small claims action without having to retain an attorney.

Recommendation

AN ACT

To Amend the New York city civil court act, the uniform city court act, the uniform district court act and the uniform justice court act, in relation to the appearance of a corporation in the defense of a small claims action

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision two of section eighteen hundred nine of the New York city civil court act, as added by chapter two hundred of the laws of nineteen hundred seventy-six, is amended to read as follows:

2. A corporation may appear in the defense of any small claim action brought pursuant to this article by a natural person who is [a shareholder who owns not less

than one-third of the issued shares of voting stock of such corporation or, in the case of a corporation having no more than ten holders of issued shares of voting stock, all of whom are natural persons,] an officer, director or employee of such corporation.

§2. Subdivision two of section eighteen hundred nine of the uniform city court act, as added by chapter two hundred of the laws of nineteen hundred seventy-six, is amended to read as follows:

2. A corporation may appear in the defense of any small claim action brought pursuant to this article by a natural person who is [a shareholder who owns not less than one-third of the issued shares of voting stock of such corporation or, in the case of a corporation having no more than ten holders of issued shares of voting stock, all of whom are natural persons,] an officer, director or employee of such corporation.

§3. Subdivision two of section eighteen hundred nine of the uniform district court act, as added by chapter two hundred of the laws of nineteen hundred seventy-six, is amended to read as follows:

2. A corporation may appear in the defense of any small claim action brought pursuant to this article by a natural person who is [a shareholder who owns not less than one-third of the issued shares of voting stock of such corporation or, in the case of a corporation having no more than ten holders of issued shares of voting stock, all of whom are natural persons,] an officer, director or employee of such corporation.

§4. Subdivision two of section eighteen hundred nine of the uniform justice court act, as added by chapter two hundred of the laws of nineteen hundred seventy-six, is amended to read as follows:

2. A corporation may appear in the defense of any small claim action brought pursuant to this article by a natural person who is [a shareholder who owns not less than one-third of the issued shares of voting stock of such corporation or, in the case of a corporation having no more than ten holders of issued shares of voting stock, all of whom are natural persons,] an officer, director or employee of such corporation.

§5. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law.

Comment

The Committee recommends the proposed amendment on the ground that the policy underlying the provisions which permit a corporate defendant to appear in small claims actions without an attorney would be fully implemented only by enactment of the proposed legislation. It should be noted that no change is recommended in the provisions which prohibit corporations from commencing small claim actions with or without an attorney.

The general provision of section 321(a) of the Civil Practice Law and Rules, which is salutary, provides that a corporation or voluntary association shall always appear in an action by an attorney, "except as otherwise provided in section 1809 of the New York city civil court act, the uniform district court act, the uniform city court act and the uniform justice court act". In 1976 these court acts all were identically amended to permit a corporation to appear in the defense of a small claim action, without an attorney, by "a shareholder who owns not less than one-third of the issued shares of voting stock of such corporation or, in the case of a corporation having no more than ten holders of issued shares of voting stock, all of whom are natural persons, an officer of the corporation".

The Advisory Committee on Civil Practice believes that small claims courts are designed primarily for *pro se* litigation and that the mandatory use of lawyers in these courts is counterproductive to speedy and inexpensive disposition and is unfair to both plaintiffs and defendants. The cumbersome exception that now permits certain corporations to defend a small claims action without a lawyer is inconsistent with the simplicity of procedure desired in small claims court, and is illogical because the complex formula does not actually distinguish on the basis of corporate size, even though such a distinction may have been intended. Conceivably, under the present statutory formula, a very large family corporation could appear without an attorney.

The traditional justification for requiring a corporation to appear by an attorney is that a corporation is not a natural person who can appear *pro se*. The Court, in *Austrian, Lance & Steward, P.C. v. Hastings Properties, Inc.*, 87 Misc.2d 25, 26 (1976), states that "the reason corporations are required to act through attorneys is that a corporation is a hydra-headed entity and its shareholders are insulated from personal responsibility. There must, therefore, be a designated spokesman accountable to the Court".

The Advisory Committee believes it untenable that in actions for \$100 or \$200 against a corporation, the corporate officer familiar with the matter cannot represent the corporation. Often it is inconvenient to retain an attorney for this purpose and the expense is unwarranted. In addition, it is hardly equitable to insist that the small individual claimant, whenever he sues a larger corporation in small claims, must either appear *pro se* and argue against a corporate attorney or else undergo the expense of retaining counsel. The unfairness works both ways.

The Advisory Committee does not feel that shareholders who are not officers should appear for corporations in small claims actions, since this often could involve dissident or unrepresentative shareholders. However, it is proposed that a corporation named as defendant in a small claims action, if it does not choose to retain an attorney, may appear by an officer, director or employee.

Part IV - Pending and Future Matters

The Committee has a number of projects which it is considering or are already under way. The most important of these are the following:

1. On recommendation of the Committee, approval has been given for a commissioned study, to be undertaken by a consultant, on structured settlements and judgments. Dean Birnbaum has requested that the Committee members suggest the names of persons who are qualified to conduct the study, and to provide guidelines as to the specific nature and aims of the study.

2. The Committee will review all legislation which has been introduced over the past few years involving some type of discovery rule for statutes of limitations where there are latent injuries arising from exposure to products and waste disposal sites. The Committee then will consider recommending legislation in this area.

3. The Committee will consider legislation to amend the General Obligations Law §15-108 for the purpose of maximizing settlements. The Committee intends to gather materials and information to facilitate consideration of a possible amendment to this provision. Such materials will include statistics on the incidence of settlements before and after *Dole v. Dow Chemical Co.*, 30 N.Y.2d 143 (1972), and related cases, as well as judicial evaluations to be considered in light of alternative statutory models on the question of indemnification and contribution raised in *Rivello v. Waldron*, 47 N.Y.2d 297 (1979). Professor Mario E. Occhialino's study in the Nineteenth Annual Report of the Judicial Conference (1974) p. 217, on which L. 1974, c.742, §3, amending the statute, was based, would be reviewed as part of this study.

4. Further study is contemplated on the costs provisions applicable in litigation, including the extra allowances provided by Article 83 of the CPLR and the costs applicable to smaller actions pursuant to Article 19 of the lower court acts. This study has been deferred until adoption of the basic increase bill that was unsuccessfully submitted to the last three sessions of the Legislature. The bill will be submitted again this year (proposal No. 12 in Part III of this Report).

5. The Committee is keeping abreast of developments in several pending cases involving the constitutionality of some enforcement of judgment provisions. These are principally the restraining notice contained in CPLR 5222 and the property execution of CPLR 5230, which were placed under a constitutional cloud for failure to require that the judgment debtor be given prior notice of the use of these devices, which affect the debtor's property. The Committee intends to closely follow the operation and effect of Chapter 882 of the Laws of 1982, which, in the wake of *Deary v. Guardian Loan Co., Inc.*, 534 F. Supp. 1178 (S.D.N.Y. 1982), amended CPLR 5222, 5232 and 5234 to provide for prior notice of restraining notices and executions or garnishments.

6. The Committee continues to explore the possibility of an effective proposal for avoiding forum abuse in smaller cases which appropriately would belong under small claims jurisdiction but are in fact commenced in the Supreme Court in plaintiff's county, although the claim arose and the defendant resides in a different county.

7. The Committee will continue to review to accept the suggestions and proposals that have been submitted to it from members of bench and bar and from the various clerks' offices around the State in response to its proposed amendments of the official forms.

8. A number of recommendations have been received by the Advisory Committee over the past year from members of the bench and the bar for a variety of revisions of small claims procedures. The growth in number of such suggestions indicates that a study of these procedures would be desirable. It is clear to the Committee that such a study must be conducted on a statewide basis because small claims problems appear to differ widely from one part of the State to another.

9. The Advisory Committee is reviewing the proposed Code of Evidence recommended by the Law Revision Commission and introduced in the Legislature. The Committee is examining the Code primarily from the point of view of its likely impact on civil procedures. The Committee intends to comment upon civil procedural aspects of the Code during this session of the Legislature.

10. There are a number of other proposals, of varying size and impact, also before the Committee, which do not require individual enumeration here.

The Committee continues to solicit the comments and suggestions of bench, bar, academic community and public, and invites the sending of all observations, suggestions and enquiries to:

Chairperson, Advisory Committee on Civil Practice
Office of Court Administration (Suite 1402)
270 Broadway
New York, New York 10007

Respectfully submitted,

Sheila L. Birnbaum,
Chairperson
John T. Frizzell
Paul S. Graziano
Raymond W. Hackbarth
Edward J. Hart
John A. Murray

William D. Eggers
Hyman W. Gamso
Robert T. Greig
James J. Harrington
Richard B. Long
David D. Siegel

March 15, 1983

1983 Report

of the

Advisory Committee on Criminal Law and Procedure

to the

Chief Administrator of the Courts

of the

State of New York

March 15, 1983

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I. Introduction

This is the Twelfth Annual Report of the Advisory Committee on Criminal Law and Procedure. We recommend endorsement of twenty-two measures to amend the Criminal Procedure Law and one to amend the Penal Law. Five of these measures are being submitted for the first time while the balance have been submitted previously, although three have been somewhat modified.

The new measures include proposals: providing for the presence of defense counsel and the district attorney at a fitness to proceed examination under Article 730 of the Criminal Procedure Law; authorizing discovery when a simplified information charging a misdemeanor is filed; clarifying that a defendant may not have the question whether his confession was obtained in violation of his *Miranda* rights submitted to a jury; providing for defendant's waiver of appeal from sentence, on the ground that it was harsh or excessive, following a negotiated plea; and providing guidelines for the use of electronic video surveillance.

Part II of this Report summarizes each of the measures previously submitted and explains its purpose. Part III summarizes each of the measures being submitted for the first time, and each of the measures submitted previously but modified upon submission this year. In both parts II and III, individual summaries are followed by drafts of appropriate legislation.

II. Previously Endorsed Measures

A. Establishment of a Procedure to Obtain Warrant of Arrest.

It is recommended that section 120 and article 120 of the Criminal Procedure Law be amended to establish a procedure for obtaining a warrant of arrest prior to the formal commencement of a criminal action.

In a recent opinion, the United States Supreme Court held that an arrest warrant must be obtained before police may enter a suspect's home to make a "routine" felony arrest, absent exigent circumstances. *Payton v. New York*, 445 U.S. 573 (1980). Under existing New York law, an arrest warrant may not be issued until after an accusatory instrument commencing a criminal action is filed. CPL §120.10. This limitation causes difficulty when authority to arrest is needed and a court is unavailable for the filing of the accusatory instrument, or practical problems delay the preparation of the instrument itself. There are also circumstances under which probable cause to arrest an individual exists but further investigation is warranted before the prosecution can determine whether to commence a criminal action. Therefore, it is necessary to develop a mechanism whereby law enforcement officers possessing the statutory requirements to arrest without a warrant in a public place may obtain judicial authorization to arrest a person in his home before formal criminal proceedings are begun.

Our proposal would establish that mechanism by amending the existing arrest warrant provisions to permit an *ex parte* application to be made to the court for a warrant when a person may be arrested for a crime pursuant to section 140.10 of the Criminal Procedure Law and all other statutory requirements are met. The application provisions are patterned after those governing search warrants (*see*, CPL §690.35), and the procedure to be followed after arrest remains as stated in section 140.20 with the additional requirements of a return of the warrant and a report to the court indicating the time and place of the arrest and subsequent steps taken.

The new procedure established by this measure will safeguard the rights of individuals suspected of criminal activity while permitting law enforcement officers to complete their investigations before commencing formal proceedings. It must be noted, however, that this measure may also have an impact upon the scope of other investigatory procedures which may be conducted before an action is commenced. *See, People v. Samuels*, 49 N.Y.2d 218 (1980).

AN ACT

To Amend the criminal procedure law, in relation to warrant of arrest

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivisions twenty-eight and twenty-nine of section 120 of the criminal procedure law are amended to read as follows:

28. ["Warrant"] (a) "Warrant of arrest" means a process of a criminal court, more fully defined in subdivisions three and four of section 120.10, directing a police officer to arrest a person.

(b) "Local criminal court warrant of arrest" means a [process] warrant of arrest of a local criminal court [, more fully defined in section 120.10.] directing a police officer, pursuant to article 120, to arrest a defendant and to bring him before such court for the purpose of arraignment upon an accusatory instrument filed therewith by which a criminal action against him has been commenced.

[29.] (c) "Superior court warrant of arrest" means a [process] warrant of arrest of a superior court directing a police officer, pursuant to subdivision three of section 210.10, to arrest a defendant and to bring him before such court for the purpose of arraignment upon an indictment filed therewith by which a criminal action against him has been commenced.

§2. Sections 120.10, 120.20, 120.30 and 120.40 of such law, section 120.10 as amended by chapter eight hundred forty-three of the laws of nineteen hundred eighty, section 120.40 as amended by chapter sixty-one

of the laws of nineteen hundred seventy-three, are amended to read as follows:

§120.10. Warrant of arrest; definition, function, form and content. 1. A *warrant of arrest* is a process of a criminal court directing a police officer to arrest a person.

2. A *local criminal court* warrant of arrest is a [process] *warrant of arrest* issued by a local criminal court directing a police officer or a peace officer appointed by the state university to arrest a defendant designated in an accusatory instrument filed with such court and to bring him before such court in connection with such instrument. The sole function of a *local criminal court* warrant of arrest is to achieve a defendant's court appearance in a criminal action for the purpose of arraignment upon the accusatory instrument by which such action was commenced.

[2.] 3. A warrant of arrest must be subscribed by the issuing judge and must state or contain (a) the name of the issuing court, and (b) the date of issuance of the warrant, and (c) the name or title of an offense [charged in the underlying accusatory instrument] *for which the person is to be arrested*, and (d) the name of the [defendant] *person to be arrested* or, if such be unknown, any name or description by which he can be identified with reasonable certainty, and (e) the police officer or officers or peace officers appointed by the state university to whom the warrant is addressed, and (f) a direction that such officer arrest [the defendant] *such person*, and (g) *where the warrant of arrest issued upon an accusatory instrument, a direction to bring him before the issuing court.*

[3.] 4. A warrant of arrest may be addressed to any police officer, a classification of police officers, or to two or more classifications thereof, as well as to a designated individual police officer or officers, as well as to peace officers appointed by the state university. Multiple copies of such a warrant may be issued.

§120.20 Warrant of arrest; when issuable. 1. When a criminal action has been commenced in a local criminal court by the filing therewith of an accusatory instrument, other than a simplified [traffic] information, against a defendant who has not been arraigned upon such accusatory instrument and has not come under the control of the court with respect thereto, such court may, if such accusatory instrument is sufficient on its face, issue a *local criminal court* warrant of arrest for such defendant's arrest.

2. (a) *Where a person may be arrested for a crime pursuant to section 140.10, a police officer or a district attorney may apply to a criminal court for a warrant of arrest. Upon such application, if the criminal court is satisfied that an arrest of such person is authorized by section 140.10, the court may issue the warrant.*

(b) *An ex parte application for such warrant must be submitted to a judge of a criminal court and it must be in writing, subscribed and sworn to by the applicant, or be made orally by the applicant, under oath, to the issuing*

judge and recorded verbatim. The application must contain:

(i) *The name of the court, the name and title of the applicant, and the date of the application;*

(ii) *A statement that an arrest of a named person (or, if such be unknown, any name or description by which such person can be identified with reasonable certainty) for a specified crime is authorized by section 140.10;*

(iii) *Allegations of fact supporting such statement. Such allegations of fact may be based upon personal knowledge of the applicant or upon information and belief. The applicant may also submit depositions of other persons containing allegations of fact, based upon personal knowledge or upon information and belief, supporting or tending to support those contained in the application. Allegations based upon information and belief shall include the source of such information and the grounds of such belief; and*

(iv) *A request that the court issue the warrant.*

[2.] 3. Even though such accusatory instrument or application, as the case may be, is sufficient on its face, the court may refuse to issue a warrant of arrest based thereon until it has further satisfied itself, by inquiry or examination of witnesses, that there is reasonable cause to believe that the defendant committed an offense charged. Upon such inquiry or examination, the court may examine, under oath or otherwise, any available person whom it believes may possess knowledge concerning the subject matter of the charge.

[3.] 4. Notwithstanding the provisions of subdivision one, if a summons may be issued in lieu of a *local criminal court* warrant of arrest pursuant to section 130.20, and if the court is satisfied that the defendant will respond thereto, it may not issue a *local criminal court* warrant of arrest.

§120.30 Warrant of arrest; by what courts issuable and in what courts returnable. 1. A *warrant of arrest may be issued by a criminal court with geographical jurisdiction of a crime specified in the application submitted to it pursuant to subdivision two of section 120.20.*

2. A *local criminal court* warrant of arrest may be issued only by the local criminal court with which the underlying accusatory instrument has been filed, and it may be made returnable in such issuing court only.

[2.] 3. The particular local criminal court or courts with which any particular local criminal court accusatory instrument may be filed for the purpose of obtaining a *local criminal court* warrant of arrest are determined, generally, by the provisions of section 100.55. If, however, a particular accusatory instrument may pursuant to said section 100.55 be filed with a particular town court and such town court is not available at the time such instrument is sought to be filed and a warrant

obtained, such accusatory instrument may be filed with the town court of any adjoining town of the same county. If such instrument may be filed pursuant to said section 100.55 with a particular village court and such village court is not available at the time, it may be filed with the town court of the town embracing such village, or if such town court is not available either, with the town court of any adjoining town of the same county.

§120.40 Warrant of arrest; attaching accusatory instrument to warrant of town court or village court. A town court or a village court which issues a *local criminal court* warrant of arrest may attach thereto a duplicate copy of the underlying accusatory instrument. If one or more duplicate copies of the warrant are issued, such court may attach as many copies of such accusatory instrument to copies of such warrant as it chooses. In any case where, pursuant to subdivision five of section 120.90, a defendant arrested upon such a warrant of arrest is brought before a local criminal court other than the town court or village court in which the warrant is returnable, a copy of the accusatory instrument constitutes a valid basis for arraignment as provided in subdivision one of section 170.15.

§3. Section 120.50 of such law is REPEALED.

§4. Section 120.90 of such law is amended by adding a new subdivision eight, to read as follows:

8. *Notwithstanding the foregoing provisions of this section, the procedure following an arrest upon a warrant of arrest issued pursuant to subdivision two of section 120.20 shall be as provided in section 140.20. Further, within a reasonable time after the arrest of a person pursuant to such warrant, a police officer shall return the warrant to the issuing court and file with it a report of the time and place of the arrest and a report as to which of the procedures of section 140.20 were followed. The failure to file such report shall not be grounds for invalidating the arrest or the evidence derived from the arrest.*

§5. This act shall take effect immediately.

Note: CPL 120.50 is repealed by this act since its provisions are included within subdivision three of CPL 120.10.

B. Authority for the Chief Administrator to Prescribe Forms.

It is recommended that the Criminal Procedure Law be amended by adding a new section 1.15 which authorizes the Chief Administrator of the Courts to adopt, amend and rescind forms to be used in all criminal courts throughout the State.

Under existing provisions of the Civil Practice Law and Rules (§107), the Family Court Act (§214), and the Surrogate's Court Procedure Act (§106), the Chief Administrator is authorized to prescribe forms for the efficient administration of these acts. Our proposal would include similar authority in the Criminal

Procedure Law. It would also provide, however, that failure to use the official forms promulgated by the Chief Administrator shall not, for that reason alone, be grounds for the denial or granting of any motion.

At present, a variety of forms are employed in criminal practice around the State. By insuring a substantial measure of uniformity, this measure would have the salutary effect of promoting the orderly and efficient administration of justice.

AN ACT

To Amend the criminal procedure law and the judiciary law, in relation to the adoption of forms for use in the criminal courts

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The criminal procedure law is amended by adding a new section 10.40 to read as follows:

§10.40 Chief administrator to prescribe forms. The chief administrator of the courts shall have the power to adopt, amend and rescind forms for the efficient and just administration of this chapter. A failure by any party to submit papers in compliance with forms authorized by this section shall not be grounds for that reason alone for denial or granting of any motion.

§2. Subdivision two of section two hundred twelve of the judiciary law is amended by adding a new paragraph (f) to read as follows:

(f) Have the power to prescribe forms pursuant to section 10.40 of the criminal procedure law.

§3. This act shall take effect immediately.

C. Immunity of Grand Jury Witnesses.

It is recommended that section 190.40 of the Criminal Procedure Law be amended to clarify existing law by providing that a witness before the grand jury does not receive immunity by reason of giving identification evidence of a nontestimonial character which the witness would have no constitutional privilege to withhold.

Section 190.40 now confers immunity upon any witness who has been compelled to "give evidence" before the grand jury. This standard of "giving evidence" is, however, overbroad and could be construed to authorize immunity for a person appearing before the grand jury even if the evidence he gives were nontestimonial and not of a type which he is otherwise privileged to withhold.

If a witness has no privilege with respect to this evidence, he has given up nothing by furnishing it to the grand jury and should not receive immunity as a result.

These considerations apply primarily to the giving of nontestimonial identification evidence, such as standing in a lineup, or furnishing a blood, voice, handwriting or fingerprint sample. A witness has no constitutional privilege to refuse to give this evidence, *Schmerber v. California*, 384 U.S. 757 (1966), and, therefore, should not receive immunity by reason of providing it.

Paragraph (c) of subdivision two of section 190.40, as added by the Legislature in 1975, recognizes the principle as it applies to corporate books and records which a witness similarly would not be privileged to withhold. Our proposal would delete paragraph (c) and replace it with a general provision which limits the grant of immunity to evidence which is protected from disclosure by the privilege against self-incrimination.

AN ACT

To Amend the criminal procedure law, in relation to the immunity received by grand jury witnesses to make clear that no immunity results from the giving of nontestimonial identification evidence which the witness would have no constitutional privilege to withhold

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 190.40 of the criminal procedure law, paragraph (c) of subdivision two thereof as added by chapter four hundred fifty-four of the laws of nineteen hundred seventy-five, is amended to read as follows:

§190.40. Grand jury; witnesses, compulsion of evidence and immunity. 1. Every witness in a grand jury proceeding must give any evidence legally requested of him regardless of any protest or belief on his part that it may tend to incriminate him.

2. [A witness who gives evidence in a grand jury proceeding] *In a grand jury proceeding, a witness who is required to give evidence under subdivision one which he would otherwise be entitled to withhold by virtue of the privilege against self-incrimination, receives immunity unless:*

(a) He has effectively waived such immunity pursuant to section 190.45; or

(b) Such evidence is not responsive to any inquiry and is gratuitously given or volunteered by the witness with knowledge that it is not responsive.

[(c) The evidence given by the witness consists only of books, papers, records or other physical evidence of an enterprise, as defined in subdivision one of section 175.00 of the penal law, the production of which is required by a subpoena duces tecum, and the witness does not possess a privilege against self-incrimination with respect to the production of such evidence. Any

further evidence given by the witness entitles the witness to immunity except as provided in subparagraph (a) and (b) of this subdivision.]

§2. This act shall take effect immediately.

D. Conduct of *Voir Dire*.

It is recommended that section 270.15 of the Criminal Procedure Law be amended to transfer responsibility for conducting the *voir dire* of prospective jurors in a criminal case from the parties to the court.

Under the proposal, the court would conduct a general examination of prospective jurors regarding their qualifications to serve. The parties would be permitted to submit written questions to the court in advance of the *voir dire*; and to submit oral or written questions during the actual questioning. The court may add these questions to its own inquiry, or it may permit counsel to ask them of the prospective jurors directly.

This procedure would result in the elimination of a significant amount of delay caused by unnecessarily prolonged *voir dire* now conducted by counsel for the parties. It combines attributes of the existing system in New York and the federal jury selection system, in which *voir dire* is generally conducted by the court without the participation of the lawyers. *See*, Fed. Rules Cr. Proc. rule 24(a). Our proposal would eliminate delay while preserving the rights of the parties to an impartial jury.

AN ACT

To Amend the criminal procedure law, in relation to examination of prospective jurors

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivisions one and two of section 270.15 of the criminal procedure law, subdivision one as amended by chapter three hundred one of the laws of nineteen hundred eighty-one and subdivision two as amended by chapter three hundred two of the laws of nineteen hundred eighty-one, are amended to read as follows:

1. If no challenge to the panel is made as prescribed by section 270.10, or if such challenge is made and disallowed, the court must direct that the names of not less than twelve members of the panel be drawn and called as prescribed by the judiciary law. Such persons must take their places in the jury box and must be immediately sworn to answer truthfully questions asked them relative to their qualifications to serve as jurors in the action. The court must [permit both parties, commencing with the people, to] examine the prospective jurors, individually or collectively, regarding their qualifications to serve as jurors. *In conducting this examination, the court must ask the prospective jurors any questions submitted to the court in writing by*

either party prior to trial, or the court may permit counsel to ask such questions. The court must also ask any additional questions submitted by either party, orally or in writing, during the course of the examination, or the court may permit counsel to ask such questions. The scope of the examination is within the discretion of the court, and the court may disallow [statements or] questions [by] of either party that are irrelevant to the examination or repetitious.

2. Upon the completion of such examination [by both parties], each party, commencing with the people, may challenge a prospective juror for cause, as prescribed by section 270.20. If such challenge is allowed, the prospective juror must be excluded from service. After both parties have had an opportunity to challenge for cause, the court must permit them to peremptorily challenge any remaining prospective juror, as prescribed by section 270.25, and such juror must be excluded from service. The people must exercise their peremptory challenges first and may not, after the defendant has exercised his peremptory challenges, make such a challenge to any remaining prospective juror who is then in the jury box. If either party so requests, challenges for cause must be made and determined, and peremptory challenges must be made, within the courtroom but outside of the hearing of the prospective jurors in such manner as not to disclose which party made the challenge. The prospective jurors who are not excluded from service must retain their place in the jury box and must be immediately sworn as trial jurors. They must be sworn to try the action in a just and impartial manner, to the best of their judgment, and to render a verdict according to the law and the evidence.

§2. This act shall take effect immediately.

E. Reduction of Peremptory Challenges.

It is recommended that section 270.25 of the Criminal Procedure Law be amended to reduce the allotted number of peremptory challenges from twenty to fifteen: if the highest crime charged is a Class A felony, from fifteen to twelve if the highest crime charged is a Class B or C felony, and from ten to eight in all other cases.

After conducting an intensive study of the method of jury selection in New York, the Subcommittee on the Jury System of the Advisory Committee on Court Administration, chaired by the Hon. Caroline K. Simon, recommended the reduction of the number of peremptory challenges to the levels proposed herein as a means of improving the efficiency of our jury selection system. Subcommittee on the Jury System, *Interim Report*, 1976/77. The Subcommittee based its recommendation on the following specific findings:

1. There is a direct correlation between the number of peremptory challenges permitted and the excessively large size of panels sent to *voir dire*.

2. Peremptory challenges extend the time necessary to conduct *voir dire*, which has the effect of delaying trials and congesting court calendars.
3. The use of the challenge provokes hostility and resentment on the part of jurors who are peremptorily excused.
4. The availability of a large number of peremptory challenges in criminal cases can result in systematic exclusion of particular groups from jury service in a given trial.
5. It is questionable whether the peremptory challenge accomplishes the purpose for which it was devised -- producing an impartial jury: indeed, it may convincingly be argued that it is used by attorneys to pick a biased jury rather than an unbiased one.

The Subcommittee also noted that New York now allows more challenges in felony cases than most other states.

This Committee agrees with these findings and recommends this proposal as an effective method of reducing a significant amount of delay in the conduct of criminal jury trials, without diminishing the fairness of the trial.

Our proposal would permit the court, for good cause shown, to increase the number of allotted peremptory challenges to the level allowed under existing law. We feel this authority is necessary to preserve the rights of the parties in exceptional cases.

AN ACT

To Amend the criminal procedure law, in relation to the number of peremptory challenges

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision two of section 270.25 of the criminal procedure law is amended to read as follows:

2. Each party must be allowed the following number of peremptory challenges:

(a) [Twenty] *Fifteen* for the regular jurors if the highest crime charged is a class A felony, and two for each alternate juror to be selected [;] *except for good cause shown the court may allow an additional number of peremptory challenges to regular jurors up to but not exceeding a total of twenty.*

(b) [Fifteen] *Twelve* for the regular jurors if the highest crime charged is a class B or class C felony, and

two for each alternate juror to be selected [;] *except for good cause shown the court may allow an additional number of peremptory challenges to regular jurors up to but not exceeding a total of fifteen.*

(c) [Ten] *Eight* for the regular jurors in all other cases, and two for each alternate juror to be selected, *except for good cause shown the court may allow an additional number of peremptory challenges to regular jurors up to but not exceeding a total of ten.*

§2. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law.

F. Decision on Motion for a Trial Order of Dismissal.

It is recommended that sections 290.10, 310.60 and 450.20 of the Criminal Procedure Law be amended to permit a trial court to reserve decision on a motion for a trial order of dismissal until after a verdict of guilty has been rendered.

By reserving decision, the trial court may preserve the People's right to appeal an adverse decision without affecting the rights of the defendant, since the decision would have to be based upon the evidence presented up to the time when the motion was made. If the motion were to be granted immediately based upon the insufficiency of the evidence presented, reprosecution would be impermissible, and therefore, the decision would not be appealable. *People v. Brown*, 40 N.Y.2d 381 (1976), *cert. den.*, 429 U.S. 975 (1976). A decision issued after a verdict has been rendered, however, is appealable, since upon reversal, the appellate court may reinstate the verdict and avoid the problems caused by defendant's constitutional privilege against double jeopardy. *People v. Leach*, 46 N.Y.2d 821 (1978).

Our proposal also clarifies that where the jury is discharged before a verdict is rendered (*see*, CPL §310.60), the court shall proceed to determine any outstanding motion for a trial order of dismissal. In addition, it provides that, upon a retrial following discharge of the jury under section 310.60, the indictment will be deemed to contain all counts contained therein at the start of the original trial except those dismissed or deemed to have resulted in acquittal upon motion pursuant to section 290.10(1).

AN ACT

To Amend the criminal procedure law, in relation to a trial order of dismissal

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision one of section 290.10 of the criminal procedure law is amended to read as follows:

1. At the conclusion of the people's case or at the conclusion of all the evidence, the court may, except as provided in subdivision two, upon motion of the defendant, (a) issue a "trial order of dismissal," dismissing any count of an indictment upon the ground that the trial evidence is not legally sufficient to establish the offense charged therein or any lesser included offense, or (b) *reserve decision on the motion until after the verdict has been rendered and accepted by the court. Where the court has reserved decision and the jury thereafter renders a verdict of guilty, the court shall proceed to determine the motion upon such evidence as it would have been authorized to consider upon the motion had the court not reserved decision. If the court determines that such motion should have been granted upon the ground specified in paragraph (a) herein, it shall enter an order both setting aside the verdict and dismissing any count of the indictment upon such ground. If the jury is discharged before rendition of a verdict the court shall proceed to determine the motion as set forth in this paragraph.*

§2. Subdivision two of section 310.60 of such law is amended to read as follows:

2. When the jury is so discharged, the defendant or defendants may be retried upon the indictment. Upon such retrial, the indictment is deemed to contain all [the] counts which it contained [at the time the previous trial was commenced, regardless of whether any count was dismissed by the court in the course of such trial], *except those which were dismissed or were deemed to have resulted in an acquittal pursuant to subdivision one of section 290.10.*

§3. Subdivision two of section 450.20 of such law is amended to read as follows:

2. [A trial order of dismissal] *An order setting aside a verdict and dismissing an accusatory instrument or a count thereof, entered pursuant to paragraph (b) of subdivision one of section 290.10 or 360.40;*

§4. This act shall take effect immediately.

G. Prosecution of Superseding Indictments.

It is recommended that section 450.50 of the Criminal Procedure Law be amended to permit the People to retry an indictment after an unsuccessful appeal of an order granting a motion to suppress when newly discovered evidence, not available at the time the appeal was taken, indicates that prosecution is in the interest of justice.

When the People take an appeal from an order suppressing evidence, they must first file a statement asserting that the deprivation of the use of the suppressed evidence has rendered the sum of the proof available to the People either insufficient as a matter of law or so weak in its entirety that any reasonable possibility of prosecuting the charge to a conviction has been effectively destroyed. CPL §450.50(1). If the appeal is

unsuccessful and the order is not reversed by the appellate court, the taking of the appeal "prohibits subsequent prosecution of the same defendant upon either the same or a superseding accusatory instrument for the crimes charged in the original instrument, at least in the absence of extraordinary circumstances." *Forte v. Supreme Court of the State of New York*, 48 N.Y.2d 179, 188 (1979); CPL 450.50(2).

Our proposal would specifically define the extraordinary circumstances alluded to in *Forte* and remove the absolute bar to prosecution in those instances where it would unduly encumber the administration of justice. For example, a literal interpretation of the existing statute would bar the prosecution of a defendant who voluntarily confesses to the crime after the People have filed their required statement. The dissent in *Forte* called for legislative action to correct the injustice which occurs when evidence not previously available to the District Attorney later becomes available, 48 N.Y.2d at 191.

Our proposal would codify that suggestion and eliminate a potential injustice in those rare instances when a court determines that subsequent developments should allow the prosecution to proceed.

AN ACT

To Amend the criminal procedure law, in relation to superseding indictments

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The section heading of section 450.20 of the criminal procedure law is amended to read as follows:

§450.20 Appeal by people to intermediate appellate court; in what cases authorized as of right.

§2. Such law is amended by adding a new section 450.25 to read as follows:

§450.25 Appeal by people to intermediate appellate court; in what cases authorized by permission.

If an appeal by the people is not authorized as of right pursuant to section 450.20, the people may appeal from an order of a criminal court denying a motion made pursuant to paragraph (c) of subdivision two of section 450.50 to authorize prosecution, provided that a certificate granting leave to appeal is issued pursuant to section 460.15.

§3. Subdivision two of section 450.50 of such law is amended to read as follows:

2. The taking of an appeal by the people, pursuant to subdivision eight of section 450.20, from an order suppressing evidence constitutes a bar to the prosecution of the accusatory instrument involving the evidence ordered suppressed, unless and until: (a) *the appeal is*

withdrawn with the permission of the intermediate appellate court, or (b) such suppression order is reversed upon appeal and vacated, or (c) new evidence is discovered which, at the time of submission or argument of the appeal, was not known by the people and could not have been known or produced with due diligence, and the evidence is such that had it been known or available, the prosecutor would not have been authorized to file the statement required by subdivision one; provided, however, that a prosecution may not be permitted pursuant to paragraph (c) unless, after providing defendant notice and an opportunity to be heard, the court in which the accusatory instrument was filed, determines that such newly discovered evidence authorizes such prosecution.

§4. Subdivision one of section 450.90 of such law is amended to read as follows:

1. Provided that a certificate granting leave to appeal is issued pursuant to section 460.20, an appeal may, except as provided in subdivision two, be taken to the court of appeals by either the defendant or the people from any adverse or partially adverse order of an intermediate appellate court entered upon an appeal taken to such intermediate appellate court pursuant to section 450.10, 450.15, [or] 450.20, *or 450.25*. An order of an intermediate appellate court is adverse to the party who was the appellant in such court when it affirms the judgment, sentence or order appealed from, and is adverse to the party who was the respondent in such court when it reverses the judgment, sentence or order appealed from. An appellate court order which modifies a judgment or order appealed from is partially adverse to each party.

§5. Subdivision four of section 460.10 of such law is amended to read as follows:

4. An appeal by a [defendant] *an appellant* to an intermediate appellate court by permission, pursuant to section 450.15 *or 450.25*, is taken as follows:

(a) Within thirty days after service upon the [defendant] *appellant* of a copy of the order sought to be appealed, the [defendant] *appellant* must make application, pursuant to section 460.15, for a certificate granting leave to appeal to the intermediate appellate court.

(b) If such application is granted and such certificate is issued, the [defendant] *appellant*, within fifteen days after issuance thereof, must file with the criminal court in which the order sought to be appealed was rendered the certificate granting leave to appeal together with a written notice of appeal, or if the appeal is from a local criminal court in a case in which the underlying proceedings were not recorded by a court stenographer, either (i) an affidavit of errors, or (ii) a notice of appeal. In all other respects, the appeal shall be taken as provided in subdivisions one, two and three.

§6. This act shall take effect immediately.

H. Justice Who May Grant Leave to Appeal.

It is recommended that section 460.20 of the Criminal Procedure Law be amended to provide that permission to appeal to the Court of Appeals from an order of an appellate division may not be sought from a justice who did not participate in the determination.

Section 460.20 now allows permission to be granted by any "justice of the appellate division of the department which entered the order sought to be appealed." Although this appears to encourage "judge-shopping," in practice, permission to appeal usually is sought only from an appellate justice who dissented in the case. Nevertheless, where the application is made to one who did not hear the arguments or participate in the decision, the unmistakable inference is that he or she has been selected because the appellant perceives a predisposition to the appellant or to a particular side, defense or prosecution. Although this perception may be incorrect, the choice of a nonparticipating justice gives the appearance of impropriety and should not be permitted.

This proposal recently was cited with approval by the Court of Appeals in its unanimous decision in *People v. Dorta*, 46 N.Y.2d 818 (1978). That case was before the Court of Appeals by permission of a justice of the appellate division who did not participate in the determination sought to be appealed. The Court of Appeals commented:

... While such procedure is presently authorized (CPL 460.20 subd. [2], par. [a]), we believe the better practice to be that which was recently advocated by the Advisory Committee on Criminal Law and Procedure - to wit, that an appellant be prohibited from seeking leave to appeal to the Court of Appeals from a Justice of the Appellate Division who did not participate in the determination of the case, 46 N.Y.2d at 821.

AN ACT

To Amend the criminal procedure law, in relation to certificates granting leave to appeal to the court of appeals

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph (a) of subdivision two of section 460.20 of the criminal procedure law is amended to read as follows:

(a) Where the appeal sought is from an order of the appellate division, the certificate may be issued by (i) a judge of the court of appeals or (ii) a justice of the appellate division [of the department which entered the order sought to be appealed] *who participated in the determination of the order sought to be appealed.*

§2. This act shall take effect immediately, and shall apply to all cases in which the order of the appellate division sought to be appealed was entered on or after such effective date.

I. Use of Conditional Examinations and Prior Testimony.

Three years ago, we recommended an amendment to article 660 of the Criminal Procedure Law to authorize the videotaping of conditional examinations, to expand authorization for use of these examinations and to expand the use of prior testimony in general. Although authorization for videotaping was adopted in the 1979-80 session of the Legislature, the remainder of the Committee's proposal was not passed. It is now recommended that section 660.20 be amended to allow conditional examinations of witnesses where there is a showing of an attempt to induce the witness to be absent or otherwise unavailable to testify, and to permit the use of prior testimony given at any pretrial hearing when all statutory conditions are met.

The expansion of the use of conditional examinations to situations where there is an attempt to induce the witness to be absent is a reasonable response to those rare situations in which this authority is necessary. This is especially true now that the examination may be videotaped, thereby enabling the trier of fact to obtain a complete view of the witness as well as a transcript of the testimony.

Authority to use transcripts of prior testimony given at pre-trial hearings is likewise reasonable and desirable, since the statute already permits the use of previous testimony given at preliminary hearings upon felony complaints. Other previous testimony is no less reliable and, therefore, also should be admissible when all other statutory requirements are met. The United States Supreme Court recently has determined that the use of the previous testimony of an unavailable witness does not violate the confrontation clause of the United States Constitution when adequate safeguards similar to those applicable in New York exist to ensure the reliability of the testimony. *State of Ohio v. Roberts*, 100 S. Ct. 2531 (1980).

AN ACT

To Amend the criminal procedure law, in relation to conditional examination of witnesses

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 660.20 of the criminal procedure law is amended to read as follows:

§660.20 Examination of witnesses conditionally; grounds for order. An order directing examination of a witness conditionally must be based upon the [ground]

grounds that there is reasonable cause to believe that such witness [; 1. Possesses] *possesses* information material to the criminal action or proceeding in issue [;], and *that*:

[2. Will] *1. The witness will not be amenable or responsive to legal process or available as a witness at a time when his testimony will be sought, either because he is [;*

(a) About] *about* to leave the state and not return for a substantial period of time [;] or *he is*

[(b) Physically] *physically* ill or incapacitated; or

2. there has been an attempt to induce such person to absent himself from, or otherwise to avoid or seek to avoid appearing or testifying at such action or proceeding.

§2. Subdivision one of section 670.10 of such law, as amended by chapter two hundred ninety-one of the laws of nineteen hundred eighty, is amended to read as follows:

1. Under circumstances prescribed in this article, testimony given by a witness at (a) a *hearing* or trial of an accusatory instrument, or (b) [a hearing upon a felony complaint conducted pursuant to section 180.60, or (c)] an examination of such witness conditionally, conducted pursuant to article six hundred sixty, may, where otherwise admissible, be received into evidence at a subsequent proceeding in or relating to the action involved when at the time of such subsequent proceeding the witness is unable to attend the same by reason of death, illness or incapacity, or cannot with due diligence be found, or is outside the state or in federal custody and cannot with due diligence be brought before the court. Upon being received into evidence, such testimony may be read and any videotape or photographic recording thereof played. Where any recording is received into evidence, the stenographic transcript of that examination shall also be received.

§3. This act shall take effect immediately.

J. Summary Dismissal of Motions to Suppress Evidence.

It is recommended that section 710.60 of the Criminal Procedure Law be amended to allow a court to dismiss summarily a motion to suppress statements when a movant fails to provide sworn allegations of fact to support the motion. This procedure has been upheld, under existing law, by the Appellate Division, Second Department, *People v. Roberto H.*, 67 AD 2d 549 (2d Dept., 1979). Our proposal would merely codify that decision. The Criminal Procedure Law "...does not require a hearing on a motion to suppress without regard to whether there is any basis for such motion, and without regard to the factual showing made in support of such motion." 67 AD 2d at 553. By requiring

a factual showing, this measure will discourage *pro forma* motions which unnecessarily burden our court system.

AN ACT

To Amend the criminal procedure law, in relation to a motion to suppress evidence

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph (b) of subdivision three of section 710.60 of the criminal procedure law is amended to read as follows:

(b) The sworn allegations of fact do not as a matter of law support the ground alleged [; except that this paragraph does not apply where the motion is based upon the ground specified in subdivision three of section 710.20].

§2. This act shall take effect immediately.

K. Corroborative Evidence Before a Grand Jury.

It is recommended that section 190.65 of the Criminal Procedure Law be amended to clarify that evidence before a grand jury is not legally sufficient unless it includes such corroborative evidence as would be required by law to sustain a conviction.

Prior to enactment of the Criminal Procedure Law, it was clear that uncorroborated accomplice testimony would be insufficient to support an indictment. *People v. Kohut*, 36 NY 2d 953; *People v. Cilento*, 2 NY 2d 55; *People v. Nitzberg*, 289 NY 523; *People v. Sweeney*, 213 NY 37. Under the Criminal Procedure Law, however, there is confusion on this issue. The Court of Appeals has not spoken, and the Appellate Divisions appear to go both ways. *People v. King*, 48 AD 2d 457 (1st Dept., 1975), *People v. Clarkson*, 50 AD 2d 903 (2nd Dept., 1975) [holding that corroboration is not required]; *People v. Laws*, 54 AD 2d 518 (3rd Dept., 1976) [holding that corroboration is required]. Reluctantly relying on the *King* and *Clarkson* cases, one court has recently held that corroboration of a confession (*see*, CPL §60.50) is not required for indictment. *People v. Kazmarick*, 99 Misc. 2d 1012, *aff'd without op.*, 75 AD 2d 1026, *aff'd on other grounds*, 52 NY 2d 322.

Our proposal would resolve this uncertainty by clarifying that corroborative evidence must be presented to the grand jury in all cases where it would be necessary to sustain a conviction at trial. This resolution is consistent with original practice under the Code of Criminal Procedure in accomplice cases, current decisional law requiring that indictments be supported by corroborative evidence requisite to conviction in non-accomplice cases (*see*, *People v. Pawley*, 71 AD 2d 307 (4th Dept., 1979); *People v. Thompson*, 30 NY 2d 971 [involving sex crimes]; *People v. Rinaldi*, 44 AD 2d

745, *aff'd* 34 NY 2d 843 [involving perjury] and the literal terms of present CPL sections 190.65(1)(a) and 70.10(a) (*see, People v. Murray*, 88 Misc. 2d 668 (Co. Ct., Suffolk Co., 1976)).

AN ACT

To Amend the criminal procedure law, in relation to corroboration before a grand jury

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision one of section 190.65 of the criminal procedure law is amended to read as follows:

1. Subject to the rules prescribing the kinds of offenses which may be charged in an indictment, a grand jury may indict a person for an offense when (a) the evidence before it is legally sufficient to establish that such person committed such offense *provided, however, such evidence is not legally sufficient when corroboration that would be required, as a matter of law, to sustain a conviction for such offense is absent*, and (b) competent and admissible evidence before it provides reasonable cause to believe that such person committed such offense.

§2. This act shall take effect immediately.

L. Affirmative Defense of Temporary Possession of a Weapon.

It is recommended that the Penal Law be amended by adding thereto a new section 265.06 to establish the affirmative defense of temporary possession of a weapon.

Under present New York law, there are a variety of defensive assertions which may be made at a trial for criminal possession of a weapon. In particular, they include failure of the prosecution to prove the required culpable mental state and statutory exemption as provided by section 265.20 of the Penal Law. They also include a caselaw-established "defense" of temporary possession of a weapon. This defense has been termed "innocent possession" (*People v. Williams*, 50 NY 2d 1043), "temporary and incidental possession" (*People v. Quintana*, 260 AD 12) and "temporary lawful possession" (*People v. Davis*, 61 AD 2d 760).

This caselaw "defense" is overly broad and ill-defined, as a result of which there have been a number of unfounded assertions of it. *See, e.g., People v. Williams, supra*. Moreover, the cases are silent as to whether the "defense" is to be disproved by the People beyond a reasonable doubt. *But see, People v. Williams, supra* at p. 1046 [Fuchsberg, J., dissenting]. Under these circumstances, trial courts are without guidance in properly charging juries.

We recommend creation of the affirmative defense of temporary possession of a weapon so as to narrow the ambit of defensive assertions which can be successfully advanced at trial. By placing a burden of proof upon the defendant to establish temporary possession by a preponderance of the evidence (Penal Law §25.00(2)), the number of unfounded defensive assertions should thereby be reduced. Under our proposal, defendant must show: (1) that he found the weapon or confiscated it from someone possessing it illegally or from someone whom he reasonably believed had used or might use it illegally, (2) that he intended to turn the weapon over to the authorities, or to render it permanently inoperable or inaccessible to anyone and was pursuing that intent "with immediacy and through a reasonable course of conduct", and (3) that he did not use the weapon illegally.

This measure does not violate due process (*see Commonwealth v. Abken*, 391 A2d 672 [Pa. Super. Ct.], *aff'd sub nom. Abken v. Pennsylvania*, 440 U.S. 952), and properly makes temporary possession of a weapon an affirmative defense. Like other affirmative defenses under the Penal Law, it represents a means of vindication which is collateral to and distinct from the prosecution's case. Also, like other affirmative defenses, it is generally based upon information likely to be known by the defendant alone.

AN ACT

To Amend the penal law, in relation to an affirmative defense of temporary possession of a weapon

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The penal law is amended by adding a new section 265.06, to read as follows:

§265.06. *Criminal possession of a weapon; affirmative defense. In any prosecution for criminal possession of a weapon, it is an affirmative defense that:*

(1) *the defendant found the weapon or confiscated it from a person who possessed it illegally or confiscated it from a person who the defendant reasonably believed had used or might use it in an illegal manner; and*

(2) *the defendant intended to turn the weapon over to a peace officer or police officer, or to render it permanently inoperable or inaccessible to anyone, and was pursuing such an intent with immediacy and through a reasonable course of conduct; and*

(3) *the defendant did not use the weapon in an illegal manner.*

§2 This act shall take effect on the first day of September next succeeding the date on which it shall have become law.

M. Examination as to Source of Cash Bail of \$10,000 or More.

It is recommended that sections 500.10 and 520.15 of the Criminal Procedure Law be amended, and that new section 520.16 be added, in order to provide a procedure for examining the source of cash bail in the amount of \$10,000 or more.

It has long been the policy of this State that courts should not approve the posting of bail bonds without some inquiry as to their sufficiency or propriety. Section 520.30 of the Criminal Procedure Law, designed to prevent the "laundering" of monies by means of a bail bond, reflects this policy. See also former CCP §§573 - 577-a. The Criminal Procedure Law is silent, however, as to the need for any comparable inquiry with respect to cash bail. *See*, CPL §520.15 [providing only that cash bail is available in every case, and that upon the mere deposit of cash bail with the appropriate agency a defendant must be released]. Without such an inquiry, it becomes entirely possible that defendants will be released upon the posting of cash bail -- with the cash being the fruits of the very crime with which they are charged.

Our proposal is designed to foreclose such an undesirable result by providing that cash bail greater than \$10,000 may not be posted without prior judicial scrutiny comparable to that now required upon the posting of a bail bond.

AN ACT

To Amend the criminal procedure law in relation to cash bail

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 500.10 of the criminal procedure law is amended by adding a new subdivision ten-a to read as follows:

10-a. "Order approving cash bail" means an order of a court approving the posting of cash bail where the amount of money designated in the order fixing bail is ten thousand dollars or more.

§2. Section 520.15 of such law is amended to read as follows:

§520.15 Bail and bail bonds; posting of cash bail. Where a court has fixed bail pursuant to subdivision two of section 520.10, at any time after the principal has been committed to the custody of the sheriff pending the posting thereof, cash bail in the amount designated in the order fixing bail may be posted even though such bail was not specified in such order, *provided, however, that where the amount of money designated in the order fixing bail is ten thousand dollars or more, cash bail may not be deposited unless an order approving cash bail has been issued by the court that has fixed*

bail. Cash bail may be deposited with (a) the county treasurer of the county in which the criminal action or proceeding is pending or, in the city of New York with the commissioner of finance, or (b) the court which issued such order, or (c) the sheriff in whose custody the principal has been committed. Upon proof of the deposit of the designated amount the principal must be forthwith released from custody, except that if the amount of money designated in the order fixing bail is ten thousand dollars or more, the principal may not be released from custody unless proof of the deposit of the designated amount is accompanied by proof of the issuance of an order approving cash bail.

§3. Such law is amended by adding a new section 520.16 to read as follows:

§520.16 Bail and bail bonds; order approving cash bail; examination as to source. 1. When cash bail in the amount of ten thousand dollars or more is to be posted in satisfaction of bail, and the district attorney has not issued a waiver of this requirement, the principal or other person on his behalf who is to post such bail must submit to the court that has fixed bail an application, in writing, for an order approving cash bail. The application must be subscribed and sworn to by the applicant and must state:

(a) the name, residential address and occupation of the applicant and of each person who is providing or furnishing the cash bail sought to be posted; and

(b) all security, all promises of indemnity, and all compensation or promises of compensation received by the applicant and by each person who has provided or furnished the cash bail sought to be posted, and the name, occupation and residential and business address of every person who has given any such indemnifying security, compensation, or promise; and

(c) whether or not the applicant or any person providing or furnishing the cash bail sought to be posted has, within a period of two years prior to the date of the application, provided or furnished cash bail in any other case or cases; and

(d) the title of the criminal action or proceeding involved; and

(e) the offense or offenses which are the subjects of the action or proceeding involved and the status of such action or proceeding; and

(f) the name of the principal and the nature of his involvement in or connection with such action or proceeding.

2. Following the submission of an application for an order approving cash bail, the court may conduct an inquiry into any matter stated or required to be stated in the application, and may also inquire into other matters appropriate to the determination, which include but are not limited to the following:

(a) the source of the money sought to be deposited as cash bail, and whether any such money constitutes the fruits of criminal or unlawful conduct;

(b) the source of any property delivered or agreed to be delivered to the person or persons providing or furnishing the cash bail sought to be posted, and whether any such property constitutes the fruits of criminal or unlawful conduct;

(c) the background, character and reputation of any person who has indemnified or agreed to indemnify the person providing or furnishing the cash bail sought to be posted; and whether any such indemnitor has within a period of two years prior to the date of the application, given indemnification or security for like purpose in any other case or cases in which the amount of money designated in the order fixing cash bail was ten thousand dollars or more.

3. A court may not issue an order approving cash bail unless and until the district attorney has been heard in the matter, or after knowledge or notice of the application and reasonable opportunity to be heard, has failed to appear at the proceeding or has otherwise waived his right to do so. Upon the inquiry conducted pursuant to subdivision two, the court may examine, under oath or otherwise, any person who may possess material information. The district attorney has the right to attend such inquiry, to call witnesses and to examine any witness in the proceeding. The court may, upon application of the district attorney, adjourn the proceeding for a reasonable period to allow him to investigate the matter. At the conclusion of the inquiry the court may issue an order either approving or disapproving cash bail.

§4. This act shall take effect on the first day of September next succeeding the date on which it shall have become law.

N. Identification Order.

It is recommended that the Criminal Procedure Law be amended by adding a new article 695 to provide a comprehensive statutory formulation for judicially-sanctioned nontestimonial identification procedures. This recommendation is the product of our detailed study of various proposals to codify investigatory procedures in New York State, and based upon our review of the Model Code of Pre-Arrest Procedure.

The principal features of our proposal are as follows:

Proposed Section 695.05

The basic approach of this recommendation is to provide a procedure whereby a prosecutor may obtain identification material in a reasonable manner which would not violate established constitutional principles. The United States Supreme Court in *Davis v. Mississippi*, 394 U.S. 721 (1969), indicated that the Court would uphold requiring persons to submit to reasonable iden-

tification procedures not involving Fifth Amendment testimonial rights, if prior judicial approval were obtained. This section would define the identification procedure in conformity with this stated objective.

Proposed Section 695.10

In compliance with the suggestion in *Davis v. Mississippi*, *supra*, this section would limit the use of an identification order to those narrowly defined circumstances in which a crime has been committed and the benefit to law enforcement outweighs the inconvenience imposed by granting the order.

Proposed Section 695.15

This section governs the specificity of information required to assist the court in making its determination whether to issue the order and to facilitate subsequent judicial review. The requirements seek to ensure that the degree of specificity in the application will meet constitutional standards. *See, Wise v. Murphy*, 275 A. 2d 205 (D.C. App. 1971).

Proposed Section 695.20

This section prescribes the form and content of the identification order itself. The order is derived from the American Law Institute's model "Order to Appear for Identification Procedures" and is tailored to similar provisions governing applications for warrants under the Criminal Procedure Law. *See, CPL §§690.45, 700.30.*

Proposed Section 695.25

This section would require personal service of the identification order and the application unless the court directs dispensing with service of the application. Service shall be completed within five days of the date of issuance, and the order may be served only between the hours of 8:00 a.m. and 8:00 p.m. unless the court finds that urgent circumstances exist to justify authorizing service at other times.

Proposed Section 695.30

Contempt of court is the appropriate authorized sanction to be imposed for failure to comply with an identification order. The United States Supreme Court has upheld the contempt sanction to enforce grand jury subpoenas requiring persons to furnish voice and handwriting exemplars, *United States v. Dionisio*, 410 U.S. 1 (1973), and the Fourth Circuit Court of Appeals upheld a conviction for contempt where a defendant refused to comply with a court order requiring him to appear in a lineup. *United States v. Hammond*, 419 F. 2d 166 (1969), *cert. den.*, 397 U.S. 1068 (1970).

Proposed Section 695.35

A motion to vacate is expressly made available to a person subject to an identification order. The subject of the order may challenge it on the grounds that it was improperly issued or that the requested evidence could

have been obtained by other means. This section would also provide that a person may be compelled to give the requested evidence without receiving immunity therefor. See, *Schmerber v. California*, 384 U.S. 757 (1966).

Proposed Section 695.40

The key feature of this section is that no person may be subjected to investigative questioning while being detained pursuant to an identification order. This provision would serve to satisfy the objectives of the proposal while ensuring respect for a person's Fifth Amendment rights. See, *Dunaway v. New York*, 442 U.S.200 (1979).

Proposed Section 695.45

The identification order shall be returned to the issuing judge within the specified time period, and, if the order was implemented, the return shall contain a description of the evidence obtained.

Proposed Section 695.50

This section would mandate the confidentiality of all papers, applications and orders, except as may be provided by court order upon application of the subject of the identification order or the applicant.

The enactment of this proposal would have a significant impact upon the criminal justice process. There is now no statutory authority in New York regulating procedures for obtaining identification evidence. If the police have sufficient evidence to establish probable cause to arrest a person, they may proceed with their investigation. If, however, the evidence does not satisfy the probable cause standard but does meet the criteria established by this proposal, under existing statutory law, there is no way that the police can secure the presence of a person who does not consent to the identification. As stated in the commentary to the American Law Institute's Model Code of Pre-Arrestment Procedure:

A strict adherence to the standard of probable cause for detentions to conduct identification procedure not only hinders the police in their efforts to gather evidence, but also encourages them to use arrest in cases where there may not be reasonable cause. In many cases the police have sufficient evidence to justify a lawful arrest, yet further investigation is called for before a decision to institute criminal proceedings is warranted. Since, under generally prevailing law, sufficient grounds to arrest are required to obtain identification evidence, the police may arrest before conducting such procedures and then determine whether to charge the suspect with the crime. If, as a result of the evidence obtained from such post-arrest procedures the suspect is found to be innocent of the crime under

investigation and released without further judicial proceedings, he still [must bear the consequences of an arrest].

AN ACT

To Amend the criminal procedure law, in relation to an identification order

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The criminal procedure law is amended by adding a new article six hundred ninety-five, to read as follows:

Article 695

Identification Order

§695.05 *Identification order; definitions.*

§695.10 *Identification order; when issuable.*

§695.15 *Identification order; application.*

§695.20 *Identification order; form and content.*

§695.25 *Identification order; service.*

§695.30 *Identification order; failure to comply.*

§695.35 *Identification order; motion to vacate; modification.*

§695.40 *Identification order; implementation.*

§695.45 *Identification order; return.*

§695.50 *Identification order; confidentiality.*

§695.05. *Identification orders; definitions. As used in this article, the following terms have the following meanings:*

1. "Identification order" means a criminal court order and process directing a qualified person to conduct an identification procedure.

2. "Identification procedure" means a procedure to obtain:

(a) identification by fingerprints, palm prints, foot prints, body measurements, dental impressions, or other reasonable body surface examinations;

(b) specimens or samples of blood, urine, saliva, hair or fingernails, or other bodily substances that can be obtained by comparable methods;

(c) identification material that may be on the surface of the body or under fingernails or that can be obtained by comparable methods; or

(d) witness identification through lineups, photographs, voice samples or handwriting exemplars.

3. "Applicant" means a prosecutor.

4. "Qualified person" means a person qualified by professional training to assure the accuracy of the identification procedure and to prevent injury to the subject of the procedure.

§695.10. Identification order; when issuable. A criminal court may issue an identification order upon an application made in conformity with this article, where there are:

1. reasonable grounds to believe that a crime specifically designated in the application has been committed; and

2. reasonable grounds to believe that the results of the identification procedure will be of material aid in the investigation or prosecution of the designated crime.

§695.15. Identification order; application. 1. The application for an identification order may be made ex parte. It must be submitted to a judge of a criminal court, and it must either be in writing, subscribed and sworn to by the applicant, or be made orally by the applicant, under oath, before the issuing judge and recorded verbatim.

2. The application must contain:

(a) the name of the court, the name and title of the applicant and the name or description of the person to be subject to the identification order;

(b) the identification procedure to be conducted, the methods to be used, the approximate length of time of such procedures and the name of the qualified person to conduct such procedure;

(c) the time when and the place where the applicant requests that the identification procedures be conducted; and

(d) a full and complete statement of the facts and circumstances relied upon by the applicant to justify the issuance of an identification order pursuant to section 695.10. Such allegations of fact may be based upon personal knowledge of the applicant or upon information and belief, provided that in the latter event the sources of such information and the grounds of such belief are stated. The applicant may also submit sworn statements of other persons containing allegations of fact supporting or tending to support those contained in the application. Where an accusatory instrument has been filed against the person sought to be subjected to the identification procedure, such instrument may be appended to the application and shall be a sufficient basis for finding that there is probable cause to believe that the designated crime has been committed.

3. An application for an identification order may be made at any time before or after arrest of the person to be subjected to the identification procedure, or before or after the commencement of a criminal action or proceeding against such person; provided, however, no provision of this article shall be construed to abrogate, limit or condition any other lawful means for obtaining identification evidence.

4. In determining an application, the court may examine, under oath, any person whom it believes may possess pertinent information. Any such examination must either be recorded or summarized on the record by the court.

§695.20. Identification order; form and content. An identification order must contain:

1. the name and title of the applicant, the subscription and title of the issuing judge, and the date of issuance;

2. the name of the qualified person who shall conduct the identification procedure and to whom the order shall be addressed;

3. the name and description of the person who is the subject of the identification order;

4. a statement that the presence of such person is required for the purpose of conducting one or more specified identification procedures in order to obtain evidence that will aid in the investigation or prosecution of one or more specified crimes;

5. the time and place of the required appearance of such person;

6. the identification procedures to be conducted, the methods to be used, and the approximate length of time such procedures are expected to take;

7. a direction that such person shall not alter the identifying characteristics covered by the order or destroy any evidence sought to be obtained;

8. a direction that such person will not be subjected to investigative questioning and that he is under no obligation to make any statement during the period of his appearance except for that required for voice identification;

9. a statement that such person may request the person who shall conduct the identification procedure to make a reasonable modification of the order with respect to time, place or method of conducting the identification procedure;

10. a statement that such person may apply to the issuing judge to modify the order with respect to the time, place or method of conducting the identification procedure, or to vacate the identification order where there are insufficient grounds for issuance or where the order is otherwise improperly issued;

11. a statement that such person may have counsel, that counsel may be present during the identification procedure, and that if he is unable to afford to provide counsel, an attorney shall be provided at public expense;

12. a direction that the identification order and all other papers and proceedings relating thereto are confidential and shall not be disclosed to the public; and

13. a statement that a failure to comply with the identification order may be punishable as a contempt of court.

§695.25. Identification order; service. 1. An identification order shall be served upon the person named or described therein by delivery of a copy to him personally. The application also shall be served upon such person with the identification order unless the issuing judge shall for good cause otherwise direct.

2. Except as provided by subdivision three, the identification order shall be served upon the person named or described therein within five days from the date of issuance, excluding Saturdays, Sundays, and legal holidays, between the hours of eight o'clock a.m. and eight o'clock p.m.

3. Upon a finding by the issuing judge of reasonable grounds to believe that there exist exigent circumstances, including, but not limited to, reasonable grounds to believe that the person named or described in the affidavit may either flee or alter the identifying characteristics covered by the order or destroy any evidence sought to be obtained, or that the order cannot be served at such time, or cannot be implemented if served at such time, the issuing judge may, by appropriate provision in the order, authorize its service at times other than those specified herein.

4. If the order is not served within the specified period, the issuing judge may, upon a showing of good cause, extend for five additional days, excluding Saturdays, Sundays, and legal holidays, the period within which the order is to be served.

§695.30. Identification order; failure to comply. Failure to comply with an identification order may be punishable as contempt of court or as otherwise provided by law.

§695.35. Identification order; motion to vacate; modification. 1. By motion of the person to be subjected to the identification procedure, the issuing judge may vacate the identification order if he finds that there were insufficient grounds for issuance or that the order was otherwise improperly issued, or that such evidence may practicably be obtained from a law enforcement agency or other public official or agency. Notwithstanding any other provision of law, no person may refuse to participate in an identification procedure on the ground that the results of the procedure may tend to incriminate him, and such person may be compelled to give such evidence without receiving immunity therefor.

2. The issuing authority may modify an identification order with respect to the time, place or method of conducting identification procedures whenever it appears reasonable under the circumstances to do so.

§695.40. Identification order; implementation. 1. Except as provided by subdivision two, the identification order shall be implemented no less than five and no more than fifteen days from the date of issuance, excluding Saturdays, Sundays, and legal holidays, between the hours of eight o'clock a.m. and eight o'clock p.m.

2. Except as provided by subdivision three, upon a finding by the issuing judge of reasonable grounds to believe that there exist exigent circumstances, including but not limited to, reasonable grounds to believe that the person to be subject to the identification procedure may, upon service of order, either flee or alter the identifying characteristics covered by the order or destroy any evidence sought to be obtained, or that delay will adversely affect the probative value of the evidence sought, or that the order cannot be effectively implemented at such time, the issuing judge may, by appropriate provision in the order, authorize its implementation at times other than those specified herein.

3. Upon a finding by the issuing judge of reasonable grounds to believe that any delay in implementation of the identification order would result in the loss of the evidence sought to be obtained, the issuing judge may, by appropriate provision in the order, direct its implementation immediately upon service of the identification order. In such instance, the identification order shall not include therein the statements specified in subdivisions ten and eleven of section 695.20.

4. No person shall be detained pursuant to an identification order longer than is reasonably necessary to conduct the specified identification procedures.

5. No person while detained pursuant to an identification order shall be subject to investigative questioning. A law enforcement officer conducting the identification procedures shall advise the person that he may not be so questioned, that he is not obliged to say anything except as may be required for voice identification, and that any volunteered statements may be used in evidence against him.

6. Notwithstanding any other provision of law, upon the written request or consent of the person subject to the identification order, the qualified person to whom the order is addressed may change the time, place, or method of conducting the identification procedure.

§695.45. Identification order; return. 1. If an identification order is not implemented within the time specified therein, the person who applied for the order shall return the order to the issuing judge on or before the date so specified, together with a report of the reasons why it was not implemented.

2. An officer who has conducted an identification procedure authorized by an identification order or, if such officer is unavailable, another officer acting in his behalf, shall, as soon as practicable, return the order to the issuing judge with a description of the evidence obtained.

§695.50. *Identification order; confidentiality.* All papers and proceedings relating to the application for the identification order, the identification order, the return, a motion to vacate or modify the identification order, or a motion to compel compliance with the identification order shall be kept confidential and not disclosed to the public by any person. Upon application of either the person named as the subject of the identification order or the applicant, the court may, if the interests of justice dictate, order disclosure of any such papers and proceedings. Decisions and orders of a court made in the course of any such proceedings may be published, provided their form and content do not identify the subject of the identification application and order.

§2. Subdivision two of section 240.40 of such law, as added by chapter four hundred twelve of the laws of nineteen hundred seventy-nine, is amended to read as follows:

2. Upon motion of the prosecutor, and subject to constitutional limitation, (a) the court in which an indictment, superior court information, prosecutor's information or information is pending [; (a)] must order discovery as to any property not disclosed upon a demand pursuant to section 240.30, if it finds that the defendant's refusal to disclose such material is not justified [;], and (b) the court in which an indictment, superior court information, prosecutor's information, information, felony complaint or misdemeanor complaint is pending may order the defendant to provide non-testimonial evidence; provided, however, where a felony complaint is pending in a local criminal court, the superior court which would have trial jurisdiction of the offense or offenses charged were an indictment therefor to result may also order the defendant to provide non-testimonial evidence. Such order may, among other things, require the defendant to:

- (i) Appear in a line-up;
- (ii) Speak for identification by witness or potential witness;
- (iii) Be fingerprinted;
- (iv) Pose for photographs not involving reenactment of an event;
- (v) Permit the taking of samples of blood, hair or other materials from his body in a manner not involving an unreasonable intrusion thereof or a risk of serious physical injury thereto;
- (vi) Provide specimens of his handwriting;

(vii) Submit to a reasonable physical or medical inspection of his body.

This subdivision shall not be construed to limit, expand, or otherwise affect the issuance of a similar court order, as may be authorized by law, before the filing of an accusatory instrument consistent with such rights as the defendant may derive from the constitution of this state or of the United States.

§3. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law.

O. Appeals to the Court of Appeals.

It is recommended that subdivision two of section 450.90 of the Criminal Procedure Law be amended to permit the Court of Appeals to review an unpreserved question of law decided by an appellate division as a matter of discretion in the interest of justice.

An intermediate appellate court may reverse a conviction on the basis of an unpreserved error of law occurring at trial. Because the error is unpreserved, however, reversal cannot be on the law alone (*see, People v. Johnson*, 47 NY 2d 124, 126 (1979)), but upon an exercise of the court's authority to reverse as a matter of discretion in the interest of justice. CPL §§470.15(3)(c) and 470.15(6)(a). The intermediate appellate court's order not being on the law alone, despite any recital to the contrary, no review of that court's action is authorized in the Court of Appeals. *People v. Cona*, 49 NY 2d 26, 34 (1979); *People v. Johnson, supra*; CPL §450.90(2).

By permitting the Court of Appeals to review an unpreserved question of law, upon which an appellate division has predicted reversal of a criminal conviction, this proposal would perform a salutary function. The present statutory formulation precludes such high court review simply because of the defendant's failure to register appropriate objection or protest at trial. CPL §470.05(2). Thus, the People, who had no reason or occasion to raise that objection or protest, are unfairly restrained from seeking further review of a pure question of law which the appellate division has only reached via exercise of its interest of justice jurisdiction.

Besides insuring that no party may derive a benefit from lack of diligence or inattention at trial, this proposal would cure a serious jurisdictional defect in the Court of Appeals' criminal jurisdiction. At the same time, it would not result in any significant increase in the Court's caseload, nor would it encroach on the appellate division's longstanding authority to review criminal cases in the interest of justice. It would merely insure that cases raising questions of law worthy enough to merit exercise of the latter's discretionary powers of review will thereafter be subject to review by our State's highest court.

AN ACT

To Amend the criminal procedure law, in relation to appeals to the court of appeals

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision two of section 450.90 of the criminal procedure law is amended to read as follows:

2. An appeal to the court of appeals from an order of an intermediate appellate court reversing or modifying a judgment, sentence or order of a criminal court may be taken only if:

(a) The court of appeals determines that the intermediate appellate court's determination of reversal or modification was on the law alone or upon the law and such facts which, but for the determination of law, would not have led to reversal or modification; or

(b) The appeal is based upon a contention that corrective action, as that term is defined in section 470.10, taken or directed by the intermediate appellate court was illegal; or

(c) *The court of appeals determines that the intermediate appellate court's determination of reversal or modification, irrespective of the form of its order, was made as a matter of discretion in the interests of justice based solely upon the intermediate appellate court's review of a question which would otherwise constitute a question of law, but for the lack of protest or preservation pursuant to section 470.05. In such instance, the court of appeals may review the unpreserved or unprotested question of law pursuant to subdivision two of section 470.35 and direct such corrective action as may be appropriate pursuant to section 470.40.*

§2. This act shall take effect immediately.

III. New or Modified Measures

A. Presence of Counsel at Competency Examinations.

It is recommended that subdivision one of section 730.20 of the Criminal Procedure Law be amended to provide that defense counsel and the district attorney may be present at an examination conducted under Article 730 to determine if a defendant in a criminal matter lacks "capacity to understand the proceedings against him or to assist in his own defense." CPL §730.10(1). Also recommended is an amendment authorizing a court, in its discretion, to permit a psychiatrist or psychologist retained by either party to attend such a competency examination.

Defense counsel's role, when he is present, would be limited to advising his client; he could not otherwise participate in the examination. Thus, the defendant's Sixth Amendment right to counsel at this critical stage

of a criminal proceeding is protected, *see People v. Wood*, 64 AD 2d 676 (3rd Dept. 1978), while intrusion during the examination is minimized. *Cf., Lee v. County Court of Erie County*, 27 NY 2d 432, 444 (1971), *cert. denied*, 404 U.S. 823 (1972).

More than safeguarding defendant's rights, however, this proposal aims to render equal the strategic positions of prosecution and defense when a competency examination is ordered. Accordingly, balancing defense counsel's right to attend, the district attorney would be permitted to attend as well -- albeit strictly in the role of an observer. Likewise, balancing a defendant's right to have a psychologist or psychiatrist present during a competency examination, a right available under current law, the district attorney should be permitted to bring his own medical expert along, as well.

AN ACT

To Amend the criminal procedure law, in relation to presence of counsel at fitness to proceed hearings

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision one of section 730.20 of the criminal procedure law is amended to read as follows:

1. The appropriate director to whom a criminal court issues an order of examination must be determined in accordance with rules jointly adopted by the [judicial conference] *chief administrator of the courts* and the commissioner. Upon receipt of an examination order, the director must designate two qualified psychiatrists, of whom he may be one, to examine the defendant to determine if he is an incapacitated person, except that if the director is of the opinion that the defendant may be mentally defective, he may designate one qualified psychiatrist and one certified psychologist to examine the defendant. *The psychiatric examiners so designated must notify the district attorney and counsel for the defendant of the time and place of their examination.* In conducting their examination, the psychiatric examiners may employ any method which is accepted by the medical profession for the examination of persons alleged to be mentally ill or mentally defective. *Both the district attorney and counsel for the defendant have the right to be present at such examination. Counsel for the defendant may advise the defendant, but neither counsel may otherwise take part in the examination.* The court may also authorize a psychiatrist or psychologist retained by [the defendant] *either party* to be present at such examination.

§2. This act shall take effect immediately.

B. Discovery When a Simplified Information is Filed.

It is recommended that sections 240.20, 240.30 and 240.40 of the Criminal Procedure Law be amended to

authorize discovery in cases arising out of simplified informations charging misdemeanors.

Under current law, discovery is authorized in cases arising out of indictments, superior court informations, prosecutor's informations and informations. There is no discernible basis, however, for excluding those simplified informations which charge a misdemeanor from this group. They can be functionally interchangeable with informations, and it is unfair to condition a defendant's right to discovery, in a misdemeanor case carrying the potential for a year's jail time, upon a police officer's mere choice of form of the accusatory instrument.

AN ACT

To Amend the criminal procedure law, in relation to discovery in cases based upon a simplified information charging a misdemeanor

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The opening unlettered paragraph of subdivision one of section 240.20 of the criminal procedure law, as added by chapter four hundred twelve of the laws of nineteen hundred seventy-nine, is amended to read as follows:

§240.20 Discovery; upon demand of defendant. 1. Except to the extent protected by court order, upon a demand to produce by a defendant against whom an indictment, superior court information, prosecutor's information [or], information, *or simplified information charging a misdemeanor* is pending, the prosecutor shall disclose to the defendant and make available for inspection, photography, copying or testing, the following property:

§2. Subdivision one of section 240.30 of such law, as amended by chapter two hundred twenty of the laws of nineteen hundred eighty, is amended to read as follows:

§240.30 Discovery; upon demand of prosecutor. 1. Except to the extent protected by court order, upon a demand to produce by the prosecutor, a defendant against whom an indictment, superior court information, prosecutor's information [or], information, *or simplified information charging a misdemeanor* is pending shall disclose and make available for inspection, photographing, copying, or testing, subject to constitutional limitations, any written report or document, or portion thereof, concerning a physical or mental examination, or scientific test, experiment or comparisons, made by or at the request or direction of, the defendant and which the defendant intends to introduce at trial.

§3. Section 240.40 of such law, as added by chapter four hundred twelve of the laws of nineteen hundred seventy-nine, is amended to read as follows:

§240.40 Discovery; upon court order. 1. Upon motion of a defendant against whom an indictment, superior court information, prosecutor's information, [or] information, *or simplified information charging a misdemeanor* is pending, the court in which such accusatory instrument is pending: (a) must order discovery as to any material not disclosed upon demand pursuant to section 240.20, if it finds that the prosecutor's refusal to disclose such material is not justified, and (b) may order discovery with respect to any other property, which the people intend to introduce at the trial, upon a showing by the defendant that discovery with respect to such property is material to the preparation of his defense, and that the request is reasonable. Upon granting the motion pursuant to paragraph (b) hereof, the court shall, upon motion of the people showing such to be material to the preparation of their case and that the request is reasonable, condition its order of discovery by further directing discovery by the people of property, of the same kind or character as that authorized to be inspected by the defendant, which he intends to introduce at the trial.

2. Upon motion of the prosecutor, and subject to constitutional limitation, the court in which an indictment, superior court information, prosecutor's information [or], information, *or simplified information charging a misdemeanor* is pending: (a) must order discovery as to any property not disclosed upon a demand pursuant to section 240.30, if it finds that the defendant's refusal to disclose such material is not justified; and (b) may order the defendant to provide nontestimonial evidence. Such order may, among other things, require the defendant to:

- (i) Appear in a line-up;
- (ii) Speak for identification by witness or potential witness;
- (iii) Be fingerprinted;
- (iv) Pose for photographs not involving reenactment of an event;
- (v) Permit the taking of samples of blood, hair or other materials from his body in a manner not involving an unreasonable intrusion thereof or a risk of serious physical injury thereto;
- (vi) Provide specimens of his handwriting;
- (vii) Submit to a reasonable physical or medical inspection of his body.

This subdivision shall not be construed to limit, expand, or otherwise affect the issuance of a similar court order, as may be authorized by law, before the filing of an accusatory instrument consistent with such rights as the defendant may derive from the constitution of this state or of the United States.

§4. This act shall take effect thirty days after it shall have become a law; provided, however, the provisions of the criminal procedure law, as amended herein, shall be applied only to criminal actions commenced on or after such date.

C. Discovery of Non-Testimonial Evidence.

It is recommended that section 240.40 of the Criminal Procedure Law be amended to permit a court to require defendant in a case when a felony or misdemeanor complaint is pending to provide non-testimonial evidence.

During its 1979 Session, the Legislature enacted a new article 240 of the Criminal Procedure Law, providing for expanded criminal discovery procedures. Section 240.40 of this new article authorizes a court in which an indictment, superior court information, prosecutor's information or information is pending to order a defendant to provide non-testimonial evidence. This proposal would expand this authority to permit the order to issue when a felony or misdemeanor complaint is pending. Since these accusatory instruments must also contain factual allegations establishing probable cause to support the charges, it is unnecessary to exclude them from the list of instruments which provide the basis for the court's order. *See*, CPL §100.15.

This proposal, recommended last year as well, has been changed slightly. Here, both the judge of the local criminal court in which a felony complaint is pending and a judge of the superior court having trial jurisdiction over any indictment resulting therefrom may issue such an order to provide non-testimonial evidence.

AN ACT

To Amend the criminal procedure law, in relation to the discovery of non-testimonial evidence

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision two of section 240.40 of the criminal procedure law, as added by chapter four hundred twelve of the laws of nineteen hundred seventy-nine, is amended to read as follows:

2. Upon motion of the prosecutor, and subject to constitutional limitations, (a) the court in which an indictment, superior court information, prosecutor's information or information is pending [; (a)] must order discovery as to any property not disclosed upon a demand pursuant to section 240.30, if it finds that the defendant's refusal to disclose such material is not justified [;], and (b) the court in which an indictment, superior court information, prosecutor's information, information, felony complaint or misdemeanor complaint is pending may order the defendant to provide non-testimonial evidence; provided, however, where a

felony complaint is pending in a local criminal court, the superior court which would have trial jurisdiction of the offense or offenses charged were an indictment therefor to result may also order the defendant to provide non-testimonial evidence. Such order may, among other things, require the defendant to:

- (i) Appear in a line-up;
- (ii) Speak for identification by witness or potential witness;
- (iii) Be fingerprinted;
- (iv) Pose for photographs not involving reenactment of an event;
- (v) Permit the taking of samples of blood, hair or other materials from his body in a manner not involving an unreasonable intrusion thereof or a risk of serious physical injury thereto;
- (vi) Provide specimens of his handwriting;
- (vii) Submit to a reasonable physical or medical inspection of his body.

This subdivision shall not be construed to limit, expand, or otherwise affect the issuance of a similar court order, as may be authorized by law, before the filing of an accusatory instrument consistent with such rights as the defendant may derive from the constitution of this state or of the United States.

§2. This act shall take effect thirty days after it shall have become a law; provided, however, the provisions of the criminal procedure law, as amended herein, shall be applied only to criminal actions commenced on or after such date.

D. Involuntarily Made Statements

It is recommended that sections 60.45, 710.20 and 710.70 of the Criminal Procedure Law be amended to clarify that a defendant in a criminal case may not have the question whether his confession was obtained in violation of his rights under *Miranda v. Arizona* submitted to the jury.

The Court of Appeals has recently announced that a trial court must read these statutes literally and must submit the question of a confession's voluntariness under *Miranda* to a jury. *People v. Graham*, 55 NY 2d 144 (1982). Apparently, this decision was not rendered without misgivings, however, as both the plurality and concurring opinions invited the attention of the Advisory Committee and the Legislature to the matter of a statutory revision. Judge Wachtler, in particular, expressed his concern at the absence of any rational explanation for the requirement of a jury submission, pointing out that it is mandated neither by *Miranda* nor the New York State Constitution. *People v. Graham, supra*, at p. 153 (Wachtler, J., concurring).

Echoing Judge Wachtler, it is the view of the Advisory Committee that *Graham* pinpoints an anomaly in the current statutory scheme and that neither the draftsmen of the CPL nor the Legislature ever intended that *Miranda* issues be litigated before a jury. Those issues involve questions of law, and, like search and seizure questions arising under the Fourth Amendment, are more suitable for judicial resolution. Rather, the statutory scheme was designed to be of more limited scope, bringing before a jury only true involuntariness (*viz.*, involving some form of duress) claims. Accordingly, it is the purpose of this proposal to eliminate this anomaly.

AN ACT

To Amend the criminal procedure law, in relation to involuntarily made statements

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 60.45 of the criminal procedure law is amended to read as follows:

§60.45 Rules of evidence; admissibility of statements of defendants. 1. Evidence of a written or oral confession, admission, or other statement made by a defendant with respect to his participation or lack of participation in the offense charged, may not be received in evidence against him in a criminal proceeding if such statement was involuntarily made or *unconstitutionally obtained*.

2. A confession, admission or other statement is "involuntarily made" by a defendant when it is obtained from him:

(a) By any person by the use or threatened use of physical force upon the defendant or another person, or by means of any other improper conduct or undue pressure which impaired the defendant's physical or mental condition to the extent of undermining his ability to make a choice whether or not to make a statement; or

(b) By a public servant engaged in law enforcement activity or by a person then acting under his direction or in cooperation with him [;

(i) by means of any promise or statement of fact, which promise or statement creates a substantial risk that the defendant might falsely incriminate himself [;

(ii) in violation of such rights as the defendant may derive from the constitution of this state or of the United States].

3. A confession, admission or other statement is "unconstitutionally obtained" from a defendant when it is obtained in violation of such rights as he may derive from the constitution of this state or of the United States.

§2. Subdivision three of section 710.20 of such law is amended to read as follows:

3. Consists of a record or potential testimony reciting or describing a statement of such defendant involuntarily made or *unconstitutionally obtained*, within the meaning of section 60.45, to a public servant engaged in law enforcement activity or to a person then acting under his direction or in cooperation with him; or

§3. The last unnumbered paragraph of section 710.70 of such law is amended to read as follows:

Nothing contained in this article, however, precludes a defendant from attempting to establish at a trial that evidence introduced by the people of a pre-trial statement made by him should be disregarded by the jury or other trier of the facts on the ground that such statement was involuntarily made within the meaning of subdivision two of section 60.45. Even though the issue of the admissibility of such evidence was not submitted to the court, or was determined adversely to the defendant upon motion, the defendant may adduce trial evidence and otherwise contend that the statement was involuntarily made. In the case of a jury trial, the court must submit such issue to the jury under instructions to disregard such evidence upon a finding that the statement was involuntarily made.

§4. This act shall take effect thirty days after it shall have become a law; provided, however, the provisions of the criminal procedure law, as amended herein, shall be applied only to criminal actions commenced on or after such date.

E. Waiver of Appeal After Denial of Motion to Suppress Evidence.

It is recommended that sections 220.50 and 710.70 of the Criminal Procedure Law be amended to provide that a defendant who negotiates a plea following a denial of a motion to suppress evidence waives his right to appeal from such denial unless he and the prosecutor stipulate otherwise at the time the plea is taken. A somewhat similar proposal was recommended last year, but it has now been revised in several important respects.

Section 710.70(2) of the Criminal Procedure Law now provides that "an order finally denying a motion to suppress evidence may be reviewed upon an appeal from an ensuing judgment of conviction notwithstanding the fact that such judgment is entered upon a plea of guilty." This provision enables a defendant, after his motion to suppress is denied, to plead guilty to the charges and save the time and expense of a trial when his main defense was based upon the suppression of evidence. A defendant, in this motion, is not required to go through an entire trial simply to preserve an issue on appeal.

There are, however, many cases in which, as part of a negotiated plea, the defendant pleads guilty to a

lesser charge or pleads guilty to a charge in one indictment to cover several other indictments. In these cases, that defendant has made a bargain and received a benefit for this agreement to conviction for a particular crime. Nevertheless, on appeal, he may continue to argue that he should be relieved of the bargain which he freely made. This increases the heavy burden on our appellate courts, and, if the conviction is ultimately reversed, the passage of time may have severely impaired the prosecution's case.

This measure would provide that a negotiated plea will constitute a waiver of defendant's right to appeal from an order denying his suppression motion, unless both defendant and prosecutor stipulate that the former's right to appeal is to be preserved. It is certainly not unfair to require a defendant, as part of a plea bargain, to recognize that the bargain is final and that previous rulings are out of the case. The defendant could still appeal the excessiveness of his sentence or anything else not included in his agreement. Of course, in cases where there have been no plea bargains, defendants will continue to enjoy the right to appeal from a denial of suppression after a guilty plea.

The Court of Appeals has approved the prosecutorial practice of exacting a waiver of appeal from a denial of suppression as part of a negotiated plea. *People v. Williams*, 36 NY 2d 829 (1975). Moreover, the Appellate Division, Second Department, has suggested that the Legislature should preclude such appeals under such circumstances. *People v. Navarro*, 61 AD 2d 534 (1978). This is the object of this measure.

AN ACT

To Amend the criminal procedure law, in relation to a waiver of appeal of a denial of a motion to suppress evidence

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 220.50 of the criminal procedure law is amended by adding a new subdivision five to read as follows:

5. Where a defendant offers to enter a plea of guilty to part of an indictment, or to an entire indictment or part of an indictment constituting a complete disposition of one or more other indictments against the defendant then pending, after an order finally denying his motion to suppress evidence made pursuant to article seven hundred ten of this chapter, the court must inform him that entry of such plea will constitute a waiver of his right to appeal from such order, as authorized by subdivision two of section 710.70, unless both he and the prosecutor agree, either on the record or in writing filed with the indictment, that he may appeal from such order.

§2. Subdivision two of section 710.70 of such law is amended to read as follows:

2. An order finally denying a motion to suppress evidence may be reviewed upon an appeal from an ensuing judgment of conviction notwithstanding the fact that such judgment is entered upon a plea of guilty; provided, however, where judgment is entered upon a plea of guilty to part of an indictment, as provided in section 220.30, or upon a plea of guilty, whether to an indictment or to part of an indictment, which constitutes a complete disposition of one or more other indictments against the defendant then pending, such order may not be reviewed upon appeal unless, upon entry of the plea, both the defendant and the prosecutor agree, either on the record, or in a writing filed with the indictment, that the defendant may appeal from such order.

§3. This act shall take effect thirty days after it shall have become a law; provided, however, the provisions of the criminal procedure law, as amended herein, shall be applied only to criminal actions commenced on or after such date.

F. Waiver of Appeal After Negotiated Plea.

It is recommended that sections 220.50 and 450.30 of the Criminal Procedure Law be amended to provide that a defendant who negotiates a plea thereby waives his right to appeal from the sentence imposed therefor on the ground that it is harsh or excessive unless he and the prosecutor stipulate otherwise at the time the plea is taken.

There are many cases in which, as part of a negotiated plea, a defendant in a criminal case pleads guilty to a lesser charge or pleads guilty to a charge in one indictment to cover several other indictments. In these cases, that defendant has made a bargain and received a benefit for his agreement to conviction for a particular crime. Under current law he may then proceed to appeal from the sentence he receives, challenging it on grounds that it is harsh or excessive or invalid as a matter of law. CPL §450.30(1).

This measure would provide that a negotiated plea will constitute a waiver of defendant's right to appeal from the ensuing sentence upon the ground that it is harsh or excessive, unless both defendant and prosecutor stipulate that the former's right to appeal is to be preserved. It is certainly not unfair to require a defendant, as part of a plea bargain, to recognize that the bargain is final. Of course, in cases where the defendant has no firm idea of the sentence to be imposed, he will be free to seek agreement of the prosecutor to preserve his right to appeal from that sentence; failing that, he may always eschew any proffered bargain.

Nothing in this measure changes a defendant's right to appeal from a sentence on the ground that it is invalid as a matter of law. Moreover, in cases where there have been no plea bargains, defendants will continue to enjoy the right to appeal from a sentence on grounds that it is harsh or excessive.

AN ACT

To Amend the criminal procedure law, in relation to a waiver of appeal of sentence on the ground that it was harsh or excessive

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 220.50 of the criminal procedure law is amended by adding a new subdivision five to read as follows:

5. *Where defendant offers to enter a plea of guilty to part of an indictment, or to an entire indictment or part of an indictment constituting a complete disposition of one or more other indictments against the defendant then pending, the court must inform him that entry of such plea will constitute a waiver of his right to appeal from the sentence to be imposed on the ground that it is harsh or excessive, as authorized by subdivision two of section 450.10 and by subdivision one of section 450.30, unless both he and the prosecutor agree, either on the record or in writing filed with the indictment, that he may appeal from such sentence on such ground.*

§2. Subdivision one of section 450.30 of such law is amended to read as follows:

1. An appeal by the defendant from a sentence, as authorized by subdivision two of section 450.10, may be based upon the ground that such sentence either was (a) invalid as a matter of law, or (b) harsh or excessive. A sentence is invalid as a matter of law not only when the terms thereof are unauthorized but also when it is based upon an erroneous determination that the defendant had a previous valid conviction for an offense or, in the case of a resentence following a revocation of a sentence of probation or conditional discharge, upon an improper revocation of such original sentence. *Notwithstanding the provisions of this subdivision, an appeal by the defendant from a sentence may not be based upon the ground that it was harsh or excessive where such sentence was imposed upon a plea of guilty to part of an indictment, as provided in section 220.30, or upon a plea of guilty, whether to an indictment or to part of an indictment, which constitutes a complete disposition of one or more other indictments against the defendant then pending, unless, upon entry of the plea, both the defendant and the prosecutor agree, either on the record or in a writing filed with the indictment, that the defendant may appeal from such sentence on such ground.*

§3. This act shall take effect thirty days after it shall have become a law; provided, however, the provisions of the criminal procedure law, as amended herein, shall be applied only to criminal actions commenced on or after such date.

G. Establishment of a Procedure for Securing Evidence by Use of Electronic Video Surveillance.

It is recommended that the Criminal Procedure Law be amended by the addition of a new Article 695, to establish statutory guidelines for the use of video electronic surveillance as an extraordinary means of obtaining evidence of criminal activity. Legislative action establishing such guidelines was recommended by the New York Court of Appeals in its recent decision in *People v. Teicher*, 52 NY 2d 638 (1981).

The principal features of the proposed new article, modeled after Articles 690 (search warrants) and 700 (eavesdropping) of the Criminal Procedure Law, include:

Proposed section 695.05

This section defines critical terms employed in new Article 695. Of special note, "video surveillance" is defined to be "...the intentional visual observation of a person by means of a television camera or other similar electronic device that is part of a television transmitting apparatus, whether or not such observation is recorded on film or videotape, and under circumstances whereby such observation, in the absence of a video surveillance warrant, infringes upon such person's reasonable expectation of privacy or otherwise violates such rights as such person may derive from the constitution of this state or of the United States." Also, a "video surveillance warrant" is defined to be an order of a justice of the Appellate Division or of the Supreme Court, or an order of a county court judge, "authorizing video surveillance of a specified person."

Proposed section 695.10

This section sets forth general restrictions applicable to a video surveillance warrant. In particular, the warrant may only be executed by a police officer, peace officer or district attorney, or a person acting pursuant to such an official's direction, and it may not authorize surveillance of a specific person for any period longer than 30 days (or until the objective of the surveillance is achieved, if sooner).

Proposed section 695.15

This section describes the circumstances under which a video surveillance warrant may issue. *First*, it must be upon a proper application. *Second*, there must be probable cause to believe that the person who will be the object of video surveillance is committing or is about to commit an offense. *Third*, there must be probable cause to believe that activity related to the commission of such offense will be observed through video surveillance. *Fourth*, normal investigative procedures, and wiretapping procedures as well, must first

be exhausted unsuccessfully or demonstrated to be unavailing if attempted. *Fifth*, there must be probable cause to believe that the place where video surveillance is to be conducted is being used in connection with the offense or is somehow linked with the person to be subject to such surveillance.

Proposed section 695.20

This section prescribes the contents of an application for a video surveillance warrant. Such an application must be made *ex parte* and in writing.

Proposed section 695.25

This section provides that a judge or justice may grant an application and issue the video surveillance warrant, deny the application, or require the applicant to furnish additional testimony or documentary evidence in support of the application.

Proposed section 695.30

This section describes the form and content of a video surveillance warrant. Required are: specific information concerning the issuance of the warrant (applicant, court, etc.); the identity of the person(s) to be subject to video surveillance; descriptions of the place(s) to be subject to such surveillance, the activity sought to be observed and the offense to which it relates; the identity of the person(s) who will conduct the surveillance; specification as to time period during which surveillance is authorized; a minimization provision; and, if necessary, express authorization to make secret entry upon premises to install any equipment required to conduct surveillance.

Proposed section 695.35

This section expressly provides that a video surveillance warrant must be executed according to its terms, and any surveillance thereunder must cease upon termination of the authorization in the warrant.

Proposed section 695.40

This section, substantially similar to section 700.40, authorizes issuance of an order of extension of a video surveillance warrant. The extension may not exceed 30 days, and is available only upon a proper application (which must satisfy the same requirements as the initial application for a warrant) supplemented by a summary of the activities observed through surveillance to date and an explanation for the failure thus far to achieve the warrant's objective.

Proposed section 695.45

This section, substantially similar to section 700.50, provides that the judge or justice who issues a video surveillance warrant may require periodic progress reports. It also requires that, upon termination of authorized surveillance, all tapes or records shall be

made available to the judge or justice who issued the warrant therefor and sealed under his directions. Within 90 days of the termination of a video surveillance warrant (or an extension order), written notice of particulars relating to its issuance and its execution must be served upon persons named in the warrant. Thereafter, any person so served may, in the court's discretion, inspect tapes or records or the video surveillance warrant (and any extension orders) or applications therefor.

Proposed section 695.50

This section, substantially similar to section 700.55, provides for the custody of applications for video surveillance warrants and the warrants, if any, issued by a judge or justice.

Proposed section 695.55

This section, substantially similar to section 700.65, regulates disclosure and use of information derived from authorized video surveillance.

Proposed section 695.60

This section, substantially similar to section 700.70, provides for the exclusion at trial of the contents of any recording made pursuant to a video surveillance warrant, and any evidence derived therefrom, unless the prosecutor serves defendant with a copy of the video surveillance warrant and the application therefor within 15 days following arraignment. The court may, however, upon a showing of good cause and a finding of no prejudice to defendant, extend the 15 day period.

We are not unmindful of the distinctly Orwellian overtones of this proposal. In the surreptitious viewing and recording of a private person's activities, there looms the spectre of "Big Brother" and all of the abuses so vividly portrayed in that classic work of fiction, *1984*. We point out, however, that this proposal would not operate to permit video surveillance; rather, it is intended to circumscribe its use as an investigative technique by police and prosecutors in a fashion designed to safeguard the rights and privacy of the public.

In the *Teicher* case, a unanimous Court of Appeals declared that "a warrant may issue to authorize the video taping of evidence to be admitted at a subsequent [criminal] trial, provided certain procedures are followed and certain safeguards are observed." 52 NY 2d at 642. The defendant there, a dentist, had been convicted of sexually abusing two of his female patients while they were sedated. On appeal, defendant had contended that the videotape of one of his patient's visits, recorded by a camera secreted in a treatment room pursuant to a warrant, should not have been admitted into evidence.

Defendant's convictions were affirmed by the Court of Appeals, over defendant's contention that Title III of the Federal Omnibus Crime Control and Safe Streets

Act of 1968 (18 U.S.C. §§2510-2520) precludes electronic surveillance in cases of sexual abuse arising out of the victim's incapacity to consent because the offense is not among those crimes enumerated in subdivision 2 of 18 U.S.C. §2516. *See, People v. Shapiro*, 50 NY 2d 747 (1980). The Federal wiretapping statute, the Court held, does not pre-empt State law in the field of video electronic surveillance, for it does not apply – nor does it prohibit – the type of surveillance challenged.

More importantly, the *Teicher* Court rejected defendant's argument that video surveillance is so intrusive that it must be prohibited on the ground that it is unreasonable *per se* under the Fourth Amendment. The Court wrote: "...the Fourth Amendment does not mandate an absolute ban on video surveillance any more than it mandates a total prescription on electronic eavesdropping." 52 NY 2d at 653. Moreover, the warrant used in *Teicher*, although improvised because of the absence of statutory guidelines relating to application therefor and to proper form and content, nonetheless met the constitutional requirements outlined for aural eavesdropping in *Berger v. New York*, 388 U.S. 41 (1967), and *Katz v. United States*, 389 U.S. 347 (1967), which the Court of Appeals now declares to be equally applicable to video electronic surveillance.

Although upholding video surveillance in *Teicher*, the Court of Appeals expressly limited its opinion, and the guidance to be drawn from it:

"As we have stressed, the constitutional requirements outlined for eavesdropping in *Berger v. New York* (388 U.S. 41, *supra*), and *Katz v. United States* (389 U.S. 347, *supra*) are equally applicable to the area of video surveillance. While we have discussed several of these requirements in the instant case, our opinion should not be construed as an inventory of each of the necessary elements for such a warrant. The degree of intrusiveness inherent in video electronic surveillance demands unswerving adherence to each of the limitations placed upon the use of this device. Moreover, because the use of this investigative technique poses a threat to the privacy of citizens, legislative scrutiny of the field and the enactment of specific guidelines would appear to be in order." 52 NY 2d at p. 656. (emphasis supplied)

This proposal would implement the Court's suggestion. It prescribes strict conditions to be met before a judge may issue a warrant authorizing video surveillance, and equally strict procedures to be followed in the warrant's execution. Significantly, it authorizes issuance of a video surveillance warrant only as a last resort, when it is clear that eavesdropping, as well as all normal investigative techniques, have failed to produce evidence, or would fail if tried. *See*, proposed §695.20(2)(d). The *Berger/Katz* standards as to eavesdropping are embraced; accordingly, probable cause, specificity and minimization standards have been included and patterned after those set forth in Article 700 of the Criminal Procedure Law

[eavesdropping warrants]. Provisions for recording, extension orders, notice, sealing, and the disclosure and use of information derived from the video surveillance have also been included, likewise paralleling those prescribed by Article 700.

AN ACT

To Amend the criminal procedure law, in relation to securing evidence by use of video surveillance

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The criminal procedure law is amended by adding a new article six hundred ninety-five, to read as follows:

Article 695-VIDEO SURVEILLANCE WARRANTS

§695.05 Video surveillance warrants; definition of terms.

§695.10 Video surveillance warrants; in general.

§695.15 Video surveillance warrants; when issuable.

§695.20 Video surveillance warrants; application.

§695.25 Video surveillance warrants; determination of application.

§695.30 Video surveillance warrants; form and content.

§695.35 Video surveillance warrants; manner and time of execution.

§695.40 Video surveillance warrants; order of extension.

§695.45 Video surveillance warrants; progress report and notice.

§695.50 Video surveillance warrants; custody of warrant, application and recordings.

§695.55 Video surveillance warrants; disclosure and use of information; order of amendment.

§695.60 Video surveillance warrants; notice before use of evidence.

§695.05 Video surveillance warrants; definition of terms.

As used in this article, the following terms have the following meanings:

1. "Video surveillance" means the intentional visual observation of a person by means of a television camera or other similar electronic device that is part of a television transmitting apparatus, whether or not such observation is recorded on film or videotape, and under circumstances whereby such observation, in the

absence of a video surveillance warrant, infringes upon such person's reasonable expectation of privacy or otherwise violates such rights as such person may derive from the constitution of this state or of the United States.

2. "Video surveillance warrant" means an order issued by a justice authorizing video surveillance of a specified person

3. "Justice", except as otherwise provided herein, means any justice of an appellate division of the judicial department in which the video surveillance warrant is to be executed, or any justice of the supreme court of the judicial district in which the video surveillance warrant is to be executed, or any county court judge of the county in which the video surveillance is to be executed.

4. "Exigent circumstances" means conditions requiring the preservation of secrecy, and whereby there is a reasonable likelihood that a continuing investigation would be thwarted by alerting any of the persons subject to surveillance to the fact that such surveillance had occurred.

5. "Law enforcement officer" means any police officer, peace officer or district attorney.

6. "Specified offense" means any of the penal law or an attempt to commit any such felony.

§695.10 Video surveillance warrants; in general. 1. Under circumstances prescribed in this article, a justice may issue a video surveillance warrant upon ex parte application of a district attorney or the attorney general.

2. A video surveillance warrant may only be executed by a law enforcement officer or a person acting pursuant to his direction or in cooperation with him.

3. No video surveillance warrant may authorize or approve the video surveillance of any specified person for any period longer than is necessary to achieve the objective of the authorization, or in any event longer than thirty days.

§695.15. Video surveillance warrants; when issuable. A video surveillance warrant may issue only: 1. Upon an appropriate application made in conformity with this article; and

2. Upon probable cause to believe that a particularly described person is committing or is about to commit a specified offense; and

3. Upon probable cause to believe that a particular activity related to the commission of the specified offense will be observed through the use of video surveillance; and

4. Upon a showing that normal investigative procedures, and those procedures authorized by article

seven hundred, have been tried and have failed, or reasonably appear to be unlikely to succeed if tried, or to be too dangerous to employ; and

5. Upon probable cause to believe that the place where the video surveillance is to be conducted is being used, or is about to be used, in connection with the commission of the specified offense, or is leased to, listed in the name of, or commonly used by such person.

§695.20 Video surveillance warrants; application. 1. An ex parte application for a video surveillance warrant must be made to a justice in writing, and must be subscribed and sworn to by the applicant therefor.

2. The application must contain: (a) The identity of the applicant and a statement of the applicant's authority to make such application; and

(b) A particular description of the place or places where the video surveillance is to be conducted, and the person or persons whose activities are sought to be observed.

(c) A full and complete statement of the facts and circumstances relied upon by the applicant to justify his belief that a video surveillance warrant should be issued, including a statement of facts supporting a finding of probable cause to believe the matters set forth in subdivisions two, three and five of section 695.15.

(d) A full and complete statement of facts establishing that normal investigative procedures, and those procedures authorized by article seven hundred, have been tried and have failed, or reasonably appear to be unlikely to succeed if tried or to be too dangerous to employ, to obtain the evidence sought; and

(e) A statement of the period of time for which the video surveillance is required to be maintained. If the nature of the investigation is such that the authorization for video surveillance should not automatically terminate when the described type of activity has been first observed, a particular description of facts establishing probable cause to believe that additional activity of the same type will occur thereafter; and

(f) A full and complete statement of facts concerning all previous applications, known to the applicant, for a video surveillance warrant involving any of the same persons or places specified in the application, and the action taken by the justice on each such application.

3. Allegations of fact in the application may be based either upon the personal knowledge of the applicant or upon information and belief. If the applicant personally knows the facts alleged, it must be so stated. If the facts stated in the application are derived in whole or part from the statements of persons other than the applicant, the sources of such facts must be either disclosed or described, and the application must contain facts establishing the existence and reliability of the

informants or the reliability of the information supplied by them. The application must also state, so far as possible, the basis of the informant's knowledge or belief. Affidavits of persons other than the applicant may be submitted in conjunction with the application if they tend to support any fact or conclusion alleged therein. Such accompanying affidavits may be based either on personal knowledge of the affiant, or information and belief with the source thereof and the reason therefor specified.

§695.25 Video surveillance warrants; determination of application. 1. If the application conforms to section 695.20, the justice may require the applicant to furnish additional testimony or documentary evidence in support of the application. He may examine, under oath, any person for the purpose of determining whether grounds exist for the issuance of the warrant pursuant to section 695.15. Any such examination must be either recorded or summarized in writing.

2. If the justice determines on the basis of the facts submitted by the applicant that grounds exist for the issuance of a video surveillance warrant pursuant to section 695.15, the justice may grant the application and issue a video surveillance warrant, in accordance with section 695.30.

3. If the application does not conform to section 695.20, or if the justice is not satisfied that grounds exist for the issuance of a video surveillance warrant, the application must be denied.

§695.30 Video surveillance warrants; form and content. A video surveillance warrant must contain: 1. The name of the applicant, date of issuance, and the subscription and title of the issuing justice; and

2. The identity of the person or persons, whose activities are to be subject to video surveillance; and

3. The place or places to be subject to video surveillance; and

4. A particular description of the activity sought to be observed, and a statement of the specified offense to which it relates; and

5. The identity of the person or persons authorized to conduct the video surveillance; and

6. The period of time during which the video surveillance is authorized, including a statement as to whether or not it shall automatically terminate when the described activity has been first observed; and

7. A provision that the authorization for video surveillance shall be executed as soon as practicable, shall be conducted in such a way as to minimize the surveillance of activities not specifically sought, by the terms of the warrant, to be observed and must terminate upon attainment of the authorized objective, or in any event in thirty days; and

8. An express authorization to make secret entry upon a private place or premises to install any instrument, device or equipment necessary to conduct video surveillance, if such entry is necessary to execute the warrant.

§695.35 Video surveillance warrants; manner and time of execution. 1. A video surveillance warrant must be executed according to its terms by the person or persons authorized therein.

2. Upon termination of the authorization in the warrant, video surveillance as provided therein must cease and any instrument, device or equipment installed for such purpose must be removed or permanently inactivated as soon as practicable. Entry upon a private place or premise for the removal or permanent inactivation of such instrument, device or equipment is deemed to be authorized by the warrant.

3. Any activity observed video surveillance as means authorized by this article must be recorded. The recording of such activity must be done in such a way as will protect the recording from editing or other alterations.

§695.40 Video surveillance warrants; order of extension. Any time prior to the expiration of a video surveillance warrant, the applicant may apply to the issuing justice, or, if he is unavailable, to another justice, for an order of extension. The period of extension shall be no longer than the justice deems necessary to achieve the purposes for which it was granted and in no event longer than thirty days. The application for an order of extension must conform in all respects to the provisions of section 695.20 and, in addition, must contain a statement summarizing the activities thus far observed through the video surveillance, together with a reasonable explanation for the failure to achieve completely the warrant's authorized objective. The provisions of sections 695.15 and 695.25 are applicable in the determination of such application. The order of extension must conform in all respects to the provisions of section 695.30. In the execution of such order of extension the provisions of section 695.35 are applicable.

§695.45 Video surveillance warrants; progress reports and notice. 1. A video surveillance warrant may require reports to be made to the issuing justice showing what progress has been made toward achievement of the authorized objective and the need for continued video surveillance. Such reports shall be made at such intervals as the justice may require.

2. Immediately upon the expiration of the period of a video surveillance warrant, the records made pursuant to subdivision three of section 695.35 must be made available to the issuing justice and sealed under his directions.

3. Within a reasonable time, but in no case later than ninety days after termination of a video surveillance warrant, or expiration of an extension order, except as

otherwise provided in subdivision four, written notice of the fact and date of the issuance of the video surveillance warrant, and of the period of authorized video surveillance, and of the fact that during such period activities of any person or persons were or were not observed through such surveillance, must be personally served upon each person named in the warrant and such other parties to the observed activities as the justice may determine in his discretion is in the interest of justice. The justice, upon the filing of a motion by any person served with such notice, may in his discretion make available to such person or his counsel for inspection such portions of the records made pursuant to subdivision three of section 695.35, any video surveillance warrant or order of extension and any applications therefor as the justice determines to be in the interest of justice.

4. On a showing of exigent circumstances to the issuing justice, the service of the notice required by subdivision three may be postponed by order of the justice for a reasonable period of time. Renewals of an order of postponement may be obtained on a new showing of exigent circumstances.

§695.50 Video surveillance warrants; custody of warrants, applications and recordings. 1. Applications made and warrants issued under this article shall be sealed by the justice. Any video surveillance warrant, together with a copy of papers upon which the application is based, shall be delivered to and retained by the applicant as authority for the surveillance authorized therein. A copy of such video surveillance warrant, together with all the original papers upon which the application was based, must be retained by the justice issuing the same, and, in the event of the denial of an application for such a video surveillance warrant, a copy of the papers upon which the application was based must be retained by the justice denying the same. Such applications and warrants may be disclosed only upon a showing of good cause before a court and may not be destroyed except on order of the issuing or denying justice, and in any event must be kept for ten years.

2. Custody of the recordings made pursuant to subdivision three of section 695.35 may be wherever the justice orders. They may not be destroyed except upon an order of the justice who issued the warrant and in any event must be kept for ten years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of subdivision one and two of section 695.55 for investigations.

§695.55 Video surveillance warrants; disclosure and use of information; order of amendment. 1. Any law enforcement officer who, by any means authorized by this article, has obtained knowledge of the contents of any recording of an observed activity, or evidence derived therefrom, may disclose such contents to another law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

2. Any law enforcement officer who, by any means authorized by this article, has obtained knowledge of any of the contents derived therefrom, may use such contents to the extent such use is appropriate to the proper performance of his official duties.

3. Any person who has received, by any means authorized by this article, any information concerning an activity, or evidence derived therefrom, observed in accordance with the provisions of this article, may disclose that activity or such derivation evidence while giving testimony under oath in any criminal proceeding in any court or in any grand jury proceeding; provided however, that the presence of the seal provided for by subdivision two of section 695.45, or a satisfactory explanation of the absence thereof, shall be a prerequisite for the use or disclosure of any activity or evidence derived therefrom.

4. When a law enforcement officer who, by any means authorized by this article, records an activity which was not otherwise anticipated and which constitutes evidence of any crime that has been, is being or is about to be committed, the contents of such recording, and evidence derived therefrom, may be disclosed or used as provided in subdivisions one and two. Such contents and any evidence derived therefrom may be used under subdivision three when a justice amends the video surveillance warrant to include such contents. The application for such amendment must be made by the applicant as soon as practicable. If the justice finds that such contents were recorded in accordance with the provisions of this article, he may grant the application.

§695.60 Video surveillance warrants; notice before use of evidence. The recording of any activity, or evidence derived therefrom, may not be received in evidence or otherwise disclosed upon a trial of a defendant unless the people, within fifteen days after arraignment and before the commencement of the trial, furnish the defendant with a copy of the video surveillance warrant, and accompanying application, under which recording was authorized or approved. This fifteen day period may be extended by the trial court upon good cause shown if it finds that the defendant will not be prejudiced by the delay in receiving such papers.

§2. This act shall take effect on the sixtieth day next succeeding the date on which it shall have become a law.

H. Separation of Jury During Deliberations.

It is recommended that section 310.10 of the Criminal Procedure Law be amended to authorize a court to permit a deliberating jury to separate temporarily, including overnight and on weekends and holidays. This would facilitate and encourage jury service, reduce the potentially coercive impetus to arrive at a prompt verdict and save the expense necessitated by prolonged sequestration in cases in which there is no likelihood of jury tampering or influence.

Section 310.10 now provides that a deliberating jury "must be continuously kept together under the supervision of a court officer or court officers" or other personnel. This requires that deliberating jurors be kept in hotel rooms or other accommodations, fed and guarded during deliberations. This rule is in marked contrast to the more flexible approach employed in the federal courts, where sequestration is within the court's discretion.

Our proposal would amend New York's rigid rule by allowing dispersal when the court so authorizes. Dispersal should be the rule rather than the exception. In most cases the jury is not sequestered during the trial itself, and the possibility that the jurors will defy the court's instructions and read about or discuss the case with outsiders, or that the jurors will be tampered with, should be no greater during deliberations. The possibility of exposure to news reports may be less during deliberations when the media no longer have any new evidence to report.

This proposal is identical to the one submitted by the Committee last year, except that it would not require a court to obtain consent of the parties before ordering separation of a jury.

It is undisputed that this proposal would have a favorable impact on the State budget. An evaluation of costs of sequestering juries has indicated that its enactment could result in a saving of approximately \$1,200 to \$1,500 for each day a jury is not sequestered when it normally would have been, and the total potential savings in expenses for meals, lodging and transportation for jurors and overtime pay for court personnel could exceed \$1,000,000.

AN ACT

To Amend the criminal procedure law, in relation to authorizing the temporary separation of a deliberating jury

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 310.10 of the criminal procedure law, as amended by chapter two hundred fourteen of the laws of nineteen hundred seventy-four, is amended to read as follows:

§310.10 Jury deliberation; requirement of; where conducted.

1. Following the court's charge, the jury must retire to deliberate upon its verdict in a place outside the courtroom. It must be provided with suitable accommodations therefor and must, *except as otherwise provided in subdivision two*, be continuously kept together under the supervision of a court officer or court officers. In the event such court officer or court officers are not available, the jury shall be under the

supervision of an appropriate public servant or public servants. Except when so authorized by the court or when performing ministerial duties with respect to the jurors, such court officers or public servants, as the case may be, may not speak to or communicate with them or permit any other person to do so.

2. *At any time after the jury has commenced its deliberations, the court may declare the deliberations to be in recess and may thereupon direct the jury to suspend its deliberations and to separate for a reasonable period of time to be specified by the court, including Saturdays, Sundays and holidays. Before each recess, the court must admonish the jury as provided in section 270.40 and direct it to resume its deliberations when all twelve jurors have reassembled in the designated place at the termination of the declared recess.*

§2. This act shall take effect immediately.

IV. Conclusion

The Committee will continue to meet regularly to study and discuss all significant proposals affecting criminal law and procedure. We express our gratitude to the Chief Administrative Judge and the Judicial Conference for their support in achieving our shared objective of improving the criminal law.

Respectfully submitted,
THE ADVISORY COMMITTEE ON
CRIMINAL LAW AND PROCEDURE

John F. Keenan, Esq., *Chairman*
Joseph W. Bellacosa, Esq.
Hon. D. Bruce Crew, III
Hon. Richard G. Denzer
William C. Donnino, Esq.
James F. Downs, Esq.
Jerome Karp, Esq.
Salvatore Martoche, Esq.
Hon. Peter J. McQuillan
Larry I. Palmer, Esq.
Professor Peter Preiser
Hon. David S. Ritter
Hon. Albert M. Rosenblatt
Joseph E. Sedita, Esq.
Leslie C. Snyder, Esq.
Professor H. Richard Uviller
Patrick M. Wall, Esq.
Hon. Penny M. Wolfgang
Peter Zimroth, Esq.

Marc C. Bloustein, Esq.
Karen F. McGee, Esq.
Counsel

March 15, 1983

1983 Report
of the
Family Court Advisory
And
Rules Committee
to the
Chief Administrator of the Courts
of the
State of New York

March 15, 1983

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The Family Court Advisory and Rules Committee is designated and its members appointed pursuant to section 212(b) of the Family Court Act, section 212(1)(q) of the Judiciary Law and section 80.1(b)(x) of the Administrative Delegations of the Chief Judge of the State of New York 22(NYCRR).

Its mandate is to review and draft official forms for use in Family Court proceedings and to review and draft rules affecting Family Court proceedings, subject to approval and promulgation by the Chief Administrator of the Courts or the Chief Judge, as appropriate. In addition, the Committee when so requested, reviews and drafts legislation affecting Family Court proceedings or involving family law for comment or introduction to the Legislature. The Committee has also been mandated to advise the Chief Administrator on matters of general policy affecting administration in the Family Courts.

The Committee, therefore, in keeping with this broad-ranging mandate and its past practices, continued during the year 1982 to review and draft legislation, to review and propose amendments to rules and to review, revise and draft official Family Court forms, as required.

Membership

The members of the Committee during the past year were: Family Court Judges Donald J. Corbett, Jr., Chairman; Arthur J. Abrams; Gene L. Catena; Daniel J. Donahoe; Hugh Ross Elwyn; William L. Kellick, Jr.; Shirley Wohl Kram; Edward J. McLaughlin; Nicholas L. Pitaro; Richard M. Palmer; Aileen Haas Schwartz; Jack Turret; Alfred J. Weiner; and Supreme Court Justices Robert H. Wagner and Joseph B. Williams. A non-voting member of the Committee was William G. O'Brien, Esq. Frank Boccio, Esq., served as consultant.

Revision of all Official Family Court Forms

The Subcommittee on Forms under the chairmanship of Judge Gene L. Catena completed its systematic review of all existing officially prescribed Family Court forms and drafted new ones as required. After careful consideration by the full Committee, approximately 200 were sent to the Chief Administrator with the recommendation that they be prescribed for use in the Family Courts throughout the state. This was done and copies distributed to all Family Court judges and court clerks. They will appear in the Appendix of Volume 22 (C) of the New York Code of Rules and Regulations (22 NYCRR).

Because of the enactment, effective July 1, 1983, of Chapters 920 and 926 of the Laws of 1982, there is now a new article 3 of the Family Court which contains a codification of procedure for juvenile delinquency proceedings in Family Court. Present article 7 which had embodied provisions pertaining to juvenile delinquency and PINS proceedings will henceforth apply only to PINS proceedings. This sweeping change necessitates

a review of the new and amended articles and the newly revised forms for article 7. The Committee is commencing this review and will revise those which remain usable and draft new ones where required. A completely new set of forms to implement new article 3 will be prepared. Upon completion of this task, all of those proposed forms will be submitted to the Chief Administrator with a recommendation that they be approved and prescribed as official Family Court forms.

The Subcommittee is completing its review of existing official adoption forms and the full Committee is engaged in a discussion of the proposed changes. When officially prescribed by the Chief Administrator of the Courts, they will be used in adoption proceedings in each Family Court and each Surrogate's Court.

Rules Review and Revision

The Subcommittee on Rules under the chairmanship of Judge Aileen Haas Schwartz will continue its comprehensive review of all the present Uniform Family Court Rules (22 NYCRR Part 2500). However, it will begin immediately to study Chapters 920 and 926 of the Laws of 1982 inasmuch as there are a number of provisions explicitly requiring court rules where none are required at present. In addition, the present rules must be revised to conform to the requirements of the new article 3 and amended article 7.

In addition, the Subcommittee is reviewing present Part 114 of the Rules of the Chief Administrator of the Courts pertaining to adoptions (formerly Rule 20.9 of the Rules of the Administrative Board). This review is directly related to the adoption forms review described above, since a number of existing forms were drawn to implement these rules. Recommendations for revision will be discussed by the full Committee and forwarded to the Chief Administrator for consideration.

Legislative Drafting and Review

The Committee, under the direction of Judge Alfred J. Weiner, Chairman of the Subcommittee on Legislation, reviewed all bills introduced in the Legislature affecting Family Court or family law.

In addition, the members of the Committee assisted the Office of Court Administration in drafting 6 bills for introduction at the request of that Office. Of these, 4 were enacted into law, as follows (copies are attached as Appendix A):

Chapter 117 This chapter amends section 1055 of the Family Court Act to require that petitions for extensions of placement in child protective proceedings must be filed at least 60 days prior to the expiration of the period of placement, except for good cause shown. Other provisions of the chapter spell out specifically the procedure in these extension of placement proceedings. These amendments were required to

overcome the frequent problems created by the late filing of applications for extensions of placement by agencies and the lack of uniformity in these proceedings once application had been made.

Chapter 379 This chapter amends sections 1022 and 1024 of the Family Court Act to clarify and make more specific the procedural requirements of notice when a child has been removed from home in child protective proceedings either by court order prior to the filing of a petition, or without court order where an emergency exists. These amendments were required to fill a procedural gap in the statute. Although section 1028 of the Family Court Act gave parents and legal guardians of children removed from their homes under sections 1022 and 1024 of the Family Court Act the right to apply for an order returning the child, the Act contained no provisions for notice of this right. This chapter incorporates and makes mandatory statewide, provisions of a stipulation entered in the case of *Ormsby v. Blum* (U.S.D.C., W.D.N.Y.) in which the Department of Social Services agreed to provide such notice.

Chapter 773 This chapter amends sections 418 and 532 of the Family Court Act to make clear who bears the financial cost for blood grouping tests ordered in support and paternity proceedings. This chapter: 1) eliminates the existing distinction based on gender, making it clear that either the alleged father or the mother of an out-of-wedlock child may request the test; 2) requires that in the first instance, the party requesting the test is responsible for payment, unless financially unable to pay. In that event, the court may direct "the appropriate public health officer" to perform the test, or that the cost must be borne by the appropriate social services district; 3) eliminates the provision for payment out of court funds; 4) authorizes the court in its order of disposition to direct that the cost be borne ultimately by the party who does not prevail, or if financially unable to pay, by the appropriate social services district. These amendments were required in part to conform the statute to the ruling of the United States Supreme Court decision of *Orr v. Orr*, 440 U.S. 258 (1979). In part, they were deemed necessary to remove the provision calling for payment out of court funds and to indicate the appropriate method of payment.

Chapter 920 This chapter, together with Chapter 926, is a comprehensive amendment to the Family Court Act separating the portion of the Act which will now be applicable to juvenile delinquency proceedings (article 3) and the part which will remain applicable to PINS (amended article 7). While the bills which culminated in these laws were not drafted and offered for introduction by the Family Court Advisory and Rules Committee and the Office of Court Administration, certain of the provisions originated in a bill drafted with the help of this Committee and offered for sponsorship by the Office of Court Administration in several sessions of the Legislature. The original bill amended sections 724-b, 734 and 753-b of the Family Court Act dealing with the destruction of fingerprints of certain

juveniles. Its provisions are now embodied in new sections 308.1 and 354.1 of the Family Court Act. These changes were required to fill the gap in the Family Court Act to cover responsibility for notification to the Division of Criminal Justice Services in cases which were successfully adjusted by Probation, or the police, Corporation Counsel or the District Attorney elect not to proceed with the filing of a petition. Under the pre-existing sections of the Family Court Act, there was confusion about the court's responsibility for issuing an order of destruction in such cases since the statute was silent in this respect.

The followings bills drafted by the Committee and offered for introduction by the Office of Court Administration constitute the 1982-1983 legislative program (copies and supporting memoranda are attached as Appendix B):

(1) *S.1419 - A.4001* - This bill adds a new section 154-a to the Family Court Act to require that a copy of the petition initiating any proceeding in Family Court must be served upon the respondent at the time process is served or, if that is not practicable, upon the first court appearance by the respondent.

This measure would fill the apparent gap in the Family Court Act indicated by the Court of Appeals in *Matter of Larry W.*, 55 NY2d 244, 249 (1982). As of this writing, it has passed the Senate.

(2) *Educational needs of handicapped children* - This bill, which has been introduced for several legislative sessions, would repeal section 236 of the Family Court Act and section 4406 of the Education Law and amend section 232(b) of the Family Court Act and section 4401 of the Education Law to remove from Family Court its residual jurisdiction over the special educational needs of handicapped children. The measure would place full responsibility for the educational needs of all handicapped children in the State Department of Education.

In addition to the activities of the Committee which have regularly formed its continuing agenda, a number of matters, some of which commenced in 1982 or earlier, are expected to occupy the Committee's attention in 1983.

Temporary State Commission to Recodify the Family Court Act

Recognizing the impact this Commission could have upon the Family Court and Family Court proceedings, the Committee immediately upon the creation of the Commission in 1979, initiated active liaison with that body.

The first legislative proposal resulting from the work performed by this Commission is *A.10893 - S.8606*, introduced in the last legislative session. This measure would add a new Article 11 to the Social

Services Law to create an administrative procedure by which the State would recover amounts paid as Aid for Dependant Children from the persons legally responsible for child support who had failed to provide such support.

Largely as a result of federal statutory requirements (Title IV - D of the Social Security Act), support enforcement proceedings instituted by the Commissioner of Social Services in the Family Court have increased considerably since 1975. However, it is clear that the interest of the State in pressing these suits and the main spur for this action is more closely related to the recoupment of public funds and to the prevention of need for future payment of ADC, than to the traditional purpose of support proceedings in Family Court. However, the only present statutory avenue of enforcement and recoupment in New York State is by commencement of a support proceeding in Family Court. This has led not only to the dramatic increase in the volume of cases but, because the issues involved in state recoupment proceedings do not always coincide with those involved in support proceedings, to somewhat conflicting pressures upon the court. Several Commission staff members were invited to attend a Committee meeting at which there was an exchange of views on the technical aspects of earlier Commission drafts preceding the introduction of this bill. In fact, a number of Committee recommendations were embodied in the bill. Attached as Appendix C is a copy of the legislative memorandum ultimately filed by the Office of Court Administration in response to the introduction of this bill, which reflects Committee discussion.

An additional proposal of the Commission, formulated though not yet introduced as legislation, pertains to the reshaping of all proceedings in Family Court loosely characterized as "foster care review" proceedings. These consist of proceedings instituted pursuant to sections 358-a and 392 of the Social Services Law. Public hearings were held by the Commission after an initial proposal was circulated, the thrust of which was an increase in judicial involvement in the monitoring of the foster care system. Mindful of the impact which legislative changes in this area would have on the role of the Family Court and upon its resources, the Committee is continuing to maintain active watch on the course of these proposals and any legislation which is likely to result. It will subject such a bill to careful scrutiny and make detailed recommendations for consideration by the Chief Administrator.

Proposed Code of Evidence

A bill, S.8875 - A.11279 was introduced in the last legislative session which embodies a proposed Code of Evidence covering civil and criminal proceedings. The proposed Code is the culmination of work performed by the New York State Law Revision Commission undertaken in 1976 at the request of the Legislature. Since the CPLR applies to proceedings in Family Court where the Family Court Act is silent (§165 F.C.A.), the Committee reviewed the proposed Code for possible impact on Family Court or family law proceedings. Each article of the Code was assigned to a specific Committee member, written reports were submitted

and oral presentations made. As a result, the Committee is prepared to forward to the Chief Administrator its recommendations to be added to those of the other Advisory Committees reviewing the proposed Code. It will continue to review new drafts of the Code as they become available.

Consideration of Methods to Expedite Processing Cases Involving Custody Issues

Having received a request from the Court of Appeals to consider and formulate recommendations for legislative or administrative methods to reduce the present incidence of delay in the hearing and disposition of cases involving custody, the Committee proceeded to study the matter and has formulated its recommendations. The request was a broad one covering both trial and appellate courts. The same request was sent to the Advisory Committee on Civil Practice. Our Committee's proposals have been transmitted to the Civil Practice Committee at its request and we have been advised that that Committee is now in the process of studying this matter. It is anticipated that the two Committees will coordinate their studies and submit a joint report.

Family Court Pamphlet

The members of the Committee have recommended that an officially prepared information pamphlet should be drafted and made available for distribution in the Family Courts throughout the State because of the frequency of pro se appearances in this court. The Committee will be involved in the preparation and review of such a pamphlet.

Dated: March 15, 1983

Respectfully submitted,
THE FAMILY COURT ADVISORY
AND RULES COMMITTEE

Honorable Donald J. Corbett, Jr.,
Chairman

Honorable Arthur J. Abrams
Honorable Gene L. Catena
Honorable Daniel J. Donohoe
Honorable Hugh Ross Elwyn
Honorable William J. Kellick, Jr.
Honorable Shirley Wohl Kram
Honorable Edward J. McLaughlin
Honorable Nicholas L. Pitaro
Honorable Richard M. Palmer
Honorable Aileen Haas Schwartz
Honorable Jack Turret
Honorable Alfred J. Weiner
Honorable Robert H. Wagner
Honorable Joseph B. Williams

Non-Voting member
William G. O'Brien, Esq.

Consultant
Frank Boccio, Esq.

Shirley Mitgang, Esq.
Staff Counsel

Robin L. Faine, Esq.
Staff Counsel

Appendix A

CHILD PROTECTIVE PROCEEDINGS—PETITION TO EXTEND PLACEMENT

Memorandum relating to this chapter, see Judiciary Memoranda, post

CHAPTER 117

Approved May 24, 1982, effective Sept. 1, 1982

AN ACT to amend the family court act, in relation to extensions of placement in neglect or child abuse proceedings

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision (b) of section ten hundred fifty-five of the family court act, as amended by chapter two hundred twenty of the laws of nineteen hundred seventy-five, is amended to read as follows:

(b)(i) Placements under this section may be for an initial period of eighteen months and the court in its discretion may [at the expiration of that period, upon a hearing,] make successive extensions for additional periods of one year each. [The place in which or the person with whom the child has been placed under this section shall submit a report at the end of the initial period of placement and at the end of the period of placement extension, making recommendations and giving such supporting data as is appropriate] *A petition to extend a placement accompanied by supporting affidavits or reports shall be filed at least sixty days prior to the expiration of the period of placement, except for good cause shown.*

(ii) No placement shall be extended or continued pursuant to this subdivision except upon a hearing held concerning the need for extending or continuing the placement. Such hearing shall be held upon [the court's own motion or upon the motion of the person, agency or institution with whom the child was placed] *the petition filed by the person, agency or institution with whom the child was placed, or the motion of the child or the child's law guardian or of the foster parent or parents in whose home the child [resided during the period of placement] resides at the time of the application for extension of placement.*

(iii) Notice of the hearing *and a copy of the petition and any supporting affidavits or reports* shall be served *by the petitioner* upon the person, agency or institution with whom the child was placed, upon the agency supervising the care of the child on behalf of the agency with whom the child was placed, upon the child's parent or other person responsible for the child's care, [and] upon the foster parent or parents in whose home the child [resided during the period of placement] *resides at the time of the filing of the petition for extension of placement and upon the child or the child's law guardian at the time of the original placement*, each of whom shall be a party entitled to participate in the proceeding. Service of notice of the hearing shall be made in such manner and on such notice as the court may, in its discretion, prescribe.

(iv) *Pending final determination of a petition to extend such placement filed in accordance with the provisions of this section, the court, for good cause shown, may enter a temporary order extending the placement for a period not to exceed thirty days. Such temporary order may be renewed upon good cause shown.*

§2. This act shall take effect on the first day of September next succeeding the date on which it shall have become a law.

CHILD PROTECTIVE PROCEEDINGS—NOTICE TO PARENTS

Memorandum relating to this chapter, see Judiciary Memoranda, post

CHAPTER 379

Approved June 28, 1982, effective Sept. 1, 1982

AN ACT to amend the family court act, in relation to notice to parents in child protective proceedings

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section ten hundred twenty-two of the family court act is amended by adding a new subdivision (d) to read as follows:

(d) The person removing the child shall, coincident with removal, give written notice to the parent or other person legally responsible for the child's care of the right to apply to the family court for the return of the child pursuant to section one thousand twenty-eight of this act. Such notice shall be personally served upon the parent or other person at the residence of the child provided, that if such person is not present at the child's residence at the time of removal, a copy of the notice shall be affixed to the door of such residence and a copy shall be mailed to such person at his or her last known place of residence within twenty-four hours after the removal of the child. If the place of removal is not the child's residence, a copy of the notice shall be personally served upon the parent or person legally responsible for the child's care forthwith, or affixed to the door of the child's residence and mailed to the parent or other person legally responsible for the child's care at his or her last known place of residence within twenty-four hours after the removal. The form of the notice shall be prescribed by the child administrator of the courts.

§2. Paragraph (iii) of subdivision (b) of section ten hundred twenty-four of such act is renumbered paragraph (iv) and a new paragraph (iii) is added to read as follows:

(iii) give, coincident with removal, written notice to the parent or other person legally responsible for the child's care of the right to apply to the family court for the return of the child pursuant to section one thousand twenty-eight of this act. Such notice shall be personally served upon the parent or other person at the residence of the child provided, that if such person is not present at the child's residence at the time of removal, a copy of the notice shall be affixed to the door of such residence and a copy shall be mailed to such person at his or her last known place of residence within twenty-four hours after the removal of the child. If the place of removal is not the child's residence, a copy of the notice shall be personally served upon the parent or person legally responsible for the child's care forthwith, or affixed to the door of the child's residence and mailed to the parent or other person legally responsible for the child's care at his or her last known place of residence within twenty-four hours after the removal. The form of the notice shall be prescribed by the chief administrator of the courts.

§3. This act shall take effect on the first day of September next succeeding the date on which it shall have become a law.

BLOOD GROUPING TESTS IN SUPPORT AND PATERNITY PROCEEDINGS—PAYMENT

Memorandum relating to this chapter, see Judiciary Memoranda, post

CHAPTER 773

Approved July 27, 1982, effective as provided in section 3

AN ACT to amend the family court act, in relation to the payment for blood grouping tests in support and paternity proceedings

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section four hundred eighteen of the family court act, as amended by chapter nine of the laws of nineteen hundred eighty-one, is amended to read as follows:

§418. Blood grouping test; costs of test. (a) The court, on *its own motion or motion* of [the respondent, on its own motion] *any party*, may order the mother, [her] *the child and the [respondent] alleged father* to submit to one or more blood grouping tests by a duly qualified physician to determine whether or not the alleged father can be excluded as being the father of the child, and the results of such tests may be received in evidence but only in cases where definite exclusion is established. However, the results of the human leucocyte antigen blood tissue test may be received in evidence to aid in the determination of whether the alleged father is or is not the father except in cases where exclusion has already been established by other blood grouping tests. [If the respondent is financially unable to pay for the costs of a test, the court may direct any qualified public health officer to conduct such test, if practicable; otherwise, the court may direct payment from its own funds where the child is not and is not likely to be a public charge or from the funds of the social services officer where the child is or is likely to be a public charge.]

(b) *The cost of any test ordered pursuant to subdivision (a) of this section shall be, in the first instance, paid by the moving party. If the moving party is financially unable to pay such cost, the court may direct any qualified public health officer to conduct such test, if practicable; otherwise, the court may direct payment from the funds of the appropriate local social services district. In its order of disposition, however, the court may direct that the cost of any such test be apportioned between the parties according to their respective abilities to pay or be assessed against the party who does not prevail on the issue of paternity, unless such party is financially unable to pay.*

§2. Section five hundred thirty-two of such act, as amended by chapter nine of the laws of nineteen hundred eighty-one, is amended to read as follows:

§532. Blood grouping test; costs of test. (a) The court [, on motion of any party,] shall advise the parties of their right to a blood test and, *on motion of any party*, shall order the mother, her child and the alleged father to submit to one or more blood grouping tests by a duly qualified physician to determine whether or not the alleged father can be excluded as being the father of the child, and the results of such tests may be received in evidence but only in cases where definite exclusion is established. However, the results of the human leucocyte antigen blood tissue test may be received in evidence to aid in the determination of whether the alleged father is or is not the father except in cases where exclusion has already been established by other blood grouping tests. [If the alleged father is financially unable to pay for the costs of a test, the court may direct any qualified public health officer to conduct such test, if practicable; otherwise, the court may direct payment from its own funds where the child is not and is not likely to be a public charge or from the funds of the social services officer where the child is or is likely to be a public charge.]

(b) *The cost of any test ordered pursuant to subdivision (a) of this section shall be, in the first instance, paid by the moving party. If the moving party is financially unable to pay such cost, the court may direct any qualified public health officer to conduct such test, if practicable; otherwise, the court may direct payment from the*

funds of the appropriate local social services district. In its order of disposition, however, the court may direct that the cost of any such test be apportioned between the parties according to their respective abilities to pay or be assessed against the party who does not prevail on the issue of paternity, unless such party is financially unable to pay.

§3. This act shall take effect on the sixtieth day after it shall have become a law.

6

Appendix B

STATE OF NEW YORK

1419

1983-1984 Regular Sessions

IN SENATE

January 19, 1983

Introduced by Sen. BARCLAY -- (at request of the office of Court Administration) -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary.

AN ACT to amend the family court act, in relation to service of petitions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The family court act is amended by adding a new section one hundred fifty-four-a to read as follows:

§154-a. *Service of petition. In every proceeding in family court, a copy of the petition filed therein shall be served upon the respondent at the time of service of process or, if that is not practicable, at the first court appearance by respondent.*

§2. This act shall take effect immediately.

IN SUPPORT OF

S.

A.

AN ACT

To amend the family court act, in relation to service of petitions upon respondents in family court proceedings.

This measure is being introduced at the request of the Office of Court Administration. It has the support of the Family Court Advisory and Rules Committee.

This measure would add a new section 154-a to the Family Court Act to require that a copy of the petition initiating any proceeding in the Family Court must be served upon the respondent at the time process is served or, if that is not practicable, upon the first court appearance by the respondent.

The bill was drafted and is being introduced to fill what appears to be a gap in the Family Court Act

indicated by the Court of Appeals in *Matter of Larry W.* 55NY2d 244, 249. The court in its opinion in that case which involved a juvenile delinquency proceeding stated:

"First, we look to the sections of the Family Court Act, for statutory provisions relating to respondents' entitlement to receive copies of the petitions. It is somewhat surprising perhaps, but there is no provision of the Family Court Act in this regard."

While that case involved juvenile delinquency proceedings, it is the view of the Office of Court Administration and the members of the Family Court Advisory and Rules Committee, that fairness and due process would best be served by including all Family Court proceedings in such a requirement.

This measure would take effect immediately.

This measure would have no fiscal impact on the State.

IN ASSEMBLY

March 1, 1983

Introduced by M. of A. STAVISKY, HALPERIN, McCABE, BRANCA, HARENBERG, HOCHBRUECKNER -- Multi-Sponsored by -- M. of A. DUANE, W. J. RYAN -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Education

AN ACT to amend the family court act and the education law, in relation to providing for the education of handicapped children and to repeal section two hundred thirty-six of the family court act and section four thousand four hundred six of the education law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision (b) of section two hundred thirty-two of the family court act, as added by chapter eight hundred fifty-three of the laws of nineteen hundred seventy-six, is amended to read as follows:

(b) "Physically handicapped child" means a person under twenty-one years of age who [, by reason of a physical defect or infirmity, whether congenital or acquired by accident, injury or disease, is or may be expected to be totally or partially incapacitated for education or for remunerative occupation, as provided in the education law,] *is handicapped by reason of a defect or disability, whether congenital or acquired by accident, injury or disease, or is physically handicapped, as provided in section two thousand five hundred eighty-one of the public health law.*

§2. Section two hundred thirty-six of such act is REPEALED.

§3. Subdivision one and paragraph a of subdivision two of section four thousand four hundred one of the education law, as amended by chapter fifty-three of the laws of nineteen hundred eighty, are **amended** to read as follows:

1. A "child with a handicapping condition" means:

a. a person under the age of twenty-one who is entitled to attend public schools pursuant to section thirty-two hundred two of this chapter, or

b. a person as defined by paragraph a of this subdivision who is not eligible for educational services pursuant to articles seventy-three, eighty-five, eighty-seven, or eighty-eight of this chapter, including those persons under the age of five not entitled to attend school without the payment of tuition pursuant to section three thousand two hundred two of this chapter, and who, because of mental, physical or emotional reasons can receive appropriate educational opportunities from special services and programs to include, but not limited to, transportation, and the special services and programs delineated in subdivision two of this section.

a. Special classes, *summer session programs*, transitional support services, resource rooms, home instruction, and special teachers to include itinerant teachers as provided by the schools of the district of residence with such terms and services to be defined by regulations of the commissioner.

§4. Section four thousand four hundred six of such law is REPEALED.

§5. This act shall take effect on the first day of September next succeeding the date on which it shall have become a law.

REPEAL NOTE.--Section two hundred thirty-six of the family court act, proposed to be repealed by section two of this act, gives the family court jurisdiction over the educational needs of certain handicapped children. Section four thousand four hundred six of the education law, proposed to be repealed by section four of this act, prescribes the procedures to be followed in children with handicapping conditions proceedings in the family court. These sections would be rendered obsolete by the enactment of this measure which would place the educational needs of all handicapped children with the state education department.

IN SUPPORT OF

S.

A.

AN ACT

To amend the family court act and the education law, in relation to providing for the education of handicapped children and to repeal section two hundred thirty-six of the family court act and section forty-four hundred six of the education law relating thereto

This measure is being introduced at the request of the Office of Court Administration.

Chapter 853 of the Laws of 1976 limited the authority of the Family Court to make determinations concerning the educational needs of handicapped children to those situations where a child is not otherwise entitled to attend school: that is, when school is not in session, or the child is below the age of five. This measure repeals section 236 of the Family Court Act, thereby removing from Family Court this residual jurisdiction over the special educational needs of handicapped children. It also amends section 4401 of the Education Law to modify the definition of a handicapped child--to transfer this jurisdiction to the school district of the child's residence.

This measure would also amend subdivision (b) of section 232 of the Family Court Act to conform its definition of a physically handicapped child to the definition within the Public Health Law. Under this section, as proposed to be amended, the Family Court would retain the power to order services for a child in need of medical, surgical, therapeutic, or hospital care. The Family Court's jurisdiction over proceedings relating to parental contribution for medical services for physically handicapped children, supplied pursuant to section 2581 or 2582 of the Public Health Law, remains unchanged.

This Office and the Family Court Advisory and Rules Committee believe that full responsibility for determining and providing for the educational needs of all handicapped children, whether or not of school age, and whether or not for the period during which school is not in session, appropriately rests with local school districts.

This measure will also simplify the process by which parents can obtain needed educational services for handicapped children. Individual school districts now possess authority to make determinations in respect to the educational needs of all other handicapped children; they therefore have established administrative procedures to deal with these cases.

This measure would have minimal fiscal impact upon the State.

This measure would be effective on the first day of September next succeeding the date on which it shall have become a law.

Appendix C

Office of Court Administration Legislative Memorandum #20

LEGISLATIVE MEMORANDUM

S. 8606 - Sen. Smith

A. 10893 - M. of A. Friedman

AN ACT

To amend the social services law, in relation to proceedings to recover debt incurred for payments made as aid to dependent children.

This bill adds a new Article 11 to the Social Services Law creating a new administrative proceeding entitled "Debt Recovery Proceedings." Its purpose is to simplify and remove from Family Court proceedings whose primary purpose is the recovery by the State of money paid as Aid to Dependent Children ("ADC") where there are persons legally responsible and able to support the children on whose behalf these public funds have been expended.

At present, the remedy pursued by the State has been based upon an assignment to the Commissioner of Social Services by the person having custody of the child or children (the recipient of ADC, usually the mother), of the support obligation. A support proceeding is then brought by the Commissioner of Social Services in Family Court against the person legally responsible for the support of the child or children (usually the father). Because of the increased Federal interest in child support enforcement evidenced by Title IV-D of the Social Security Act, these proceedings have increased considerably since 1975 and have become a source of concern to the courts and the Office of Child Support Enforcement in the New York State Department of Social Services.

This bill reflects the growing recognition by both judicial and executive branches of the need to devise an alternative method of processing the claim of the State against these persons who can fulfill their legal obligation of support but have failed to do so, resulting in the expenditure of public funds which should be recouped.

The bill itself has been drawn by the Temporary State Commission to Recodify the Family Court Act.

The Office of Court Administration and the members of the Family Court Advisory and Rules Committee strongly support this attempt to separate this legitimate need for recoupment of public funds from Family Court support proceedings and have met with and analyzed previous versions of this bill, offering specific suggestions in order to design a legal mechanism for

accomplishing this desirable purpose. In general this bill makes a laudable beginning and, with the addition of the following changes would be supported unequivocally by the Office of Court Administration.

§501, subdivision 3 - The term "assignor" is defined and later used to refer to the person receiving ADC on behalf of the child or children. Since this new proceeding is based on the independent responsibility of the person legally responsible for the support of the child to repay the Department of Social Services under the Social Services Law, no reference need or should be made to any assignment or assignor. The assignment has significance only in the context of a Family Court support proceeding. Therefore this subdivision should be deleted and the term "assignor" deleted wherever it appears (§§504, subd. 2; 509; 511, subd. 2; 512; 522).

§501, subd. 5 - "court order" is defined and later referred to in various sections of this bill (§§503; 504; 512; 520; 521). Since this new proceeding is based only on the amount of ADC paid on behalf of the children which the state is seeking to recover, no reference should be made to court orders of support. In addition, this new administrative forum may not be given power to modify or affect a court order of support entered in Family Court. The "determination", therefore, of this newly created administrative tribunal should be kept separate and distinct from any orders entered in a judicial support proceeding. All references to a "court order" should be deleted.

§501, subd. 6 - the term "hearing examiner" is used. (It is also used in §§505 subds. 1 and 3; 509; 511; 512, subd. 2; 513; 517.) Since one of the main purposes of this bill is to create a proceeding clearly differentiated from a Family Court support proceeding, it is inadvisable to use the term "hearing examiner" which is a term of art used and created for support proceedings in Family Court. It is suggested that another term such as "determination officer" might be substituted to avoid confusion.

The role of the now existing "support collection units" in this new administrative proceeding is unclear and should be clarified. The only explicit mention is in §514 in relation to income deduction orders.

Since the purpose of the bill is to create an alternative to Family Court support

proceedings when the overriding purpose is the recovery of state funds, it is urged that a paragraph be added at its beginning, in the form of statement of legislative purpose, to the effect that this administrative proceeding is intended to have primary jurisdiction in the recoupment of state funds expended as ADC. In addition, §504, subd. 1 should be deleted entirely.

§509 refers to a "response" by the parent to the notice of proceeding. This term is too vague and should be made specific.

§511, subd. 2 - The provision for forwarding payments which exceed the amount of debt to the "assignor" should be deleted entirely. This procedure and Family Court support proceedings should be kept separate.

§513 refers to "money judgment" or "judgment", allowing relief from its effect by this administrative procedure. While the "hearing examiner" may be given such authority with respect to his or her own "determinations", court orders or judgments may not be tampered with by other than resort to the judicial process. The term "money judgment" and "judgment" should be deleted.

§518 refers to "Appeals". This should be changed to "Review" since it should be clear that this bill is dealing with a review of a determination of an administrative agency. By bringing the new statute closer to §7803 and §7804 of the CPLR, the applicability of these sections would be apparent and the standards of review would become clearer and more precise.

§520 - Here too, the use of the word "judgment" or "recovery judgment" should be avoided.

§521 - In order to emphasize the separation of this proceeding from judicial support proceedings as elaborated above, all reference to continuation of jurisdiction after the termination of public assistance should be deleted.

§522 - the words "person entitled to support for the dependent child" should be substituted for the word "assignor". In addition, subdivision 1 should be deleted altogether.

Dated: June 1, 1982

Appendices

Appendix 1

Report of the Committee to Utilize the Services of Retired Judges

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Introduction

The judicial system in New York State is seriously crippled by the problems of calendar congestion and delay. Even after extraordinary efforts were taken by the Chief Judge, there was a backlog of over 48,000 civil actions in Supreme Court in 1980.¹ Calendar delay increasingly undermines public confidence in the fairness of justice in our state.

In a further attempt to attack congestion and delay, Chief Judge Cooke created the Committee to Utilize the Services of Retired Judges ("Committee") to address the problem of how best to use the experience and talent of the State's retired judges in this area.² As but another symptom of our throw-away society, we simply have been discarding an invaluable asset of our judicial system, namely, the several hundred retired judges in our state who can, should, and want to serve. The experience of the Committee members confirmed the Chief Judge's view that retired judges, if utilized properly, could make a significant contribution toward alleviating some of the backlog and delay.

The following Report explains the various efforts taken in pursuit of an answer to this challenge. In summary, after months of examination, correspondence and discussion, the Committee respectfully submits the following proposals:

- 1) A new position of Judicial Hearing Officer should be created in the judicial system;
- 2) Judicial Hearing Officers should be selected from the ranks of retired judges who have presided in courts of record and who are certified as mentally and physically able to perform the services of this new position;
- 3) Judicial Hearing Officers should be used in both civil and criminal cases:
 - (i) *Civil cases*: To serve in all matters in which referees are presently permitted by the CPLR;
 - (ii) *Criminal cases*: To hear and report on pre-trial matters and to hear and determine minor criminal matters; and
- 4) Judicial Hearing Officers should be paid by the State through the budget of the Office of Court Administration at the rate of \$200 per diem.

The crisis proportions of the backlog in the judicial system led the Committee to the Judicial Hearing Officer idea because implementation of this concept would not involve a structural change in the judicial system and would not require a constitutional change, only relatively simple legislation. Extremely ambitious plans, such as the magistrate system used in the federal courts, were examined but ultimately not endorsed for implementation at this time. Instead, the Committee

opted for an approach that can be instituted with fairly minor legislative and administrative changes. There are broad powers already in place permitting the use of referees. But these powers have not been connected in cohesive form, and, for the most part, there is an essential element missing: state-paid compensation. In the Committee's view, its pragmatic approach – creation of state-paid Judicial Hearing Officers – provides a method for immediately attacking the ever-increasing crisis of congestion and delay. Of course, any change in this area is, in important part, contingent upon the willingness of the sitting judges to make use of the improvements and put judicial muscle behind the Judicial Hearing Officers. Pre-trial schedules must be set and enforced; delays cannot be tolerated.

Chief Judge Cooke identified the pool of retired judges as a highly desirable, readily available source of talent and formed this Committee with the very particular focus of determining the best manner for using that talent. The Committee enthusiastically endorses Chief Judge Cooke's view that the services of retired judges can, and should, be used to assist the attack on the problems facing the courts, and hopes that its suggestions provide a useful beginning for utilizing the services of retired judges.

I. The Views of Retired Judges

As a preliminary step, the Committee undertook to determine whether retired judges, in fact, wished to provide services for the court system in judicial or quasi-judicial capacities. The Committee developed an extensive questionnaire designed to determine the availability of retired judges and the types of services they would be willing to provide. These questionnaires were mailed to two hundred thirty-five (235) retired judges whose names and addresses were compiled with the cooperation of the Council of Judicial Association of the Judicial Section of the New York State Bar Association and the New York City and New York State Association of Justices of the Supreme Court of the State of New York. This was the first comprehensive survey ever taken of retired judges in New York State. The response was overwhelming.³

Of the retired judges sent questionnaires, over 50% responded, and 90% of those responding indicated that they were interested in serving the court system. Those interested expressed a desire to provide quasi-judicial services as referees or hearing officers in all areas of civil and criminal litigation, as well as participating in pre-trial or pre-appeal settlement conferences. About 25% of those willing to provide services were willing to provide these services on a full-time basis.

The key concern was compensation. Fewer than 20% would serve without compensation. Most indicated they would serve for compensation of \$150-250 per diem. The survey shows that a large pool of potential talent is available for assisting the courts in moving its cases, provided some compensation is paid.

II. Present Practices

There is surprisingly little specific legislative authorization to use retired judges in either judicial or quasi-judicial capacities in the court system. The Constitution provides that a limited class of retired judges – Court of Appeals judges and Supreme Court justices – may, if properly certificated, continue to serve in a judicial capacity after the age of 70, but only as Supreme Court justices and only up until the age of 76.⁴ All other judges of courts of record in the State – the County Courts, Family Courts, Surrogate's Courts, Court of Claims, District Courts, New York City Civil Court, New York City Criminal Court and City Courts – must leave judicial service at the age of 70. In short, the judicial services of more than two-thirds of the judges of courts of record in the State become unavailable once they retire.

In addition to the rather limited judicial uses available under the certification process, there is now in place in the court system a range of quasi-judicial activities currently conducted in an unstructured manner by referees, arbitrators and expeditors. The activities involved are uniquely suited to the talents of retired judges. New York State's Civil Practice Law and Rules ("CPLR") permits trials of many matters to be held by referees, who may either report back to the court with their findings or who may be designated to actually determine issues of fact.⁵ The court also may appoint referees to supervise discovery.⁶ In addition, the Rules of the Chief Judge permit the use of panels of arbitrators to determine claims in civil actions for a recovery of money not exceeding \$6,000⁷ and to hear small claims actions, where court rules permit.⁸ Expeditors are used to a limited extent to narrow issues on appeal or to encourage settlement before or after judgment.⁹

However, referees and arbitrators only need be attorneys, and the statutory authority to appoint referees, hearing officers and arbitrators does not provide for any specific authorization to appoint retired judges.¹⁰ Thus, it is one of the great ironies of the New York State judicial system that the very persons most experienced in the judicial fact-finding necessary to move cases through the courts rarely are used in fact-finding capacities after retirement.¹¹

A brief discussion of present practices in the court system with respect to referees, arbitrators and expeditors is useful:

A. Referees

The Legislature has provided for a system of referees and hearing officers in all phases of civil case processing that, if used effectively, could take important steps in reducing calendar congestion.¹² This system, however, is used sporadically, if at all, and barely touches the existing resource of retired judges. The fault lies not in the will of court administrators, but in the nature of the present system.

Currently, use of referees in civil cases is a pay-as-you-go process. If the court sends an issue to a referee for resolution, the parties generally must bear the expenses of the referee.¹³ This fact, more than any other, handicaps the referee system. In a time of skyrocketing costs of litigation, few parties are willing to bear the substantial extra expense of paying for judicial decision-making in a public court system. As a result, courts have been reluctant to use referees except where they have been able to structure a system of references obviating the need to appoint private attorneys as fact-finders.¹⁴

Despite these problems, the experience of the members of the Committee reveals that the referee system, when used, has proved to be a worthwhile tool for expediting civil actions. Most judicial districts use law clerks to judges to hear and report to their judges on issues in uncontested matrimonial actions.¹⁵ In addition, the courts in the First Judicial District (New York and Bronx Counties) use a structured system of court-employed law assistants as referees,¹⁶ while other courts use private attorneys to varying degrees.¹⁷

Particularly interesting are the activities in Kings County, where retired judges are used as referees; no law assistants are used.¹⁸ Two retired judges work on a full-time basis as referees to hear and report (or, with consent of the parties, to hear and determine) tax certiorari matters and accountings. Two other retired judges hear and determine uncontested matrimonial actions and hear and report or hear and determine certain contested motions in trial terms on a part-time basis. These retired judges receive no compensation, but are provided some logistical support services. The Committee found that the use of retired judges in Kings County has made a substantial contribution towards lessening calendar congestion.¹⁹

It is clear that, if the system was adjusted, retired judges usefully could fill a far wider role in a broad range of civil cases where the calendars are in trouble, with or without the consent of the parties.

B. Arbitrators

The two arbitration programs in existence in various locations in the State (civil claims under \$6,000 and small claims under \$1,500) do not require that the parties pay for the arbitrator. Small claims arbitrators are unpaid volunteers, and arbitrators selected for the three-attorney panels are paid a nominal sum of \$35-45 per case from funds appropriated to the courts by State Legislature. Retired judges may volunteer to serve as arbitrators in these programs to the same extent that any attorney may volunteer. The responses to the Committee's survey on current activities of retired judges indicate that only 10% have so volunteered.

C. Expeditors

Retired judges are an invaluable resource in evaluating the merits of lawsuits. Having resolved legal disputes

for many years, they know how strong a case is, what the real issues are, and how the case probably will be resolved. Retired judges are just beginning to be used in the area of expediting the resolution of lawsuits by holding conferences in an effort to settle them before they are heard.

This use is presently greatest at the appellate level. The Appellate Divisions in the First, Second and Fourth Departments require settlement conferences in many actions prior to appeals being perfected.²⁰ Retired judges handle these conferences and attempt to either settle the lawsuit or limit the issues on appeal. These retired judges receive no compensation, but receive support facilities.

In Monroe County, retired judges are used as pre-trial conference judges in matrimonial cases and as pre-trial screening judges to determine whether actions should be transferred from Supreme Court to a lower court.²¹ The Supreme Court in Nassau County uses two retired judges for pre-trial conference purposes. These judges are not compensated.

D. Summary

In short, there is no consistent or prevalent use of retired judges to act as referees, arbitrators or conference judges. Their use has depended, for the most part, upon the ingenuity of court administrators and the willingness of individual judges to serve with little or no compensation.

III. Recommendations of the Committee

A. Scope of Recommendations

In view of the substantial political and constitutional issues related to large-scale court restructuring, the immediacy of problems of court congestion, and the present availability of more than two hundred retired judges who could be used to ease this congestion right now, the Committee resisted the temptation to recommend a broad restructuring of the court system or constitutional changes.²² The mechanisms to utilize the services of retired judges in civil actions are already in place in the existing referee system which, with minor adjustments, could be used to put the core of retired judges into action in civil proceedings.

In addition, although the Committee recognizes that the use of retired judges in criminal proceedings will require a more extensive legislative change, the Committee believes that such change would have a significant impact on the criminal court calendars.

The Committee, therefore, recommends the formation of a new position in the judicial structure—the Judicial Hearing Officer.

B. Judicial Hearing Officers

Burgeoning litigation and a chronic shortage of judges make it counterproductive to take up a judge's

time in protracted fact-finding hearings. This is becoming even more compelling with the recent enactment of the law for equitable distribution of marital assets in divorce proceedings,²³ which requires long accountings of marital assets, and with the recent explosion of litigation in the area of tax certiorari, which similarly requires judicial computations of assessments of property. In addition, one of the greatest causes of pre-trial delay is protracted discovery. Close supervision of disclosure not only can move cases more quickly on their way to resolution, but can free judges and their legal staffs from the need to determine the innumerable motions and requests for judicial rulings that frequently accompany the disclosure process.

The built-in drawbacks of the existing pay-as-you-go referee system, where litigants pay lawyers to hear cases, do not permit the courts to use referees on a systematic basis. Instead, the courts have turned to salaried court employees to perform referee functions, primarily in the area of uncontested matrimonials, and have thus diverted the services of these court employees from assisting judges in expediting the decision-making process. Court employees have no special expertise to perform referee functions, and most are used as referees only on a sporadic basis, for they still must perform their regular job functions. Consequently, the potential for the use of referees to reduce court congestion is not being realized.

The Committee believes that the use of retired judges as state-paid Judicial Hearing Officers provides the system with a tool to ease the overburdened judicial system. More issues could be referred by a sitting judge for resolution because a large pool of talented persons will exist who are uniquely suited to perform the fact-finding function. Retired judges, backed by law, can do much to expedite the handling of matters before the court. Law clerks and law assistants could go back to assisting judges on a full-time basis without being diverted by referee assignments.

1. Civil Proceedings

The Committee recommends that retired judges be used as Judicial Hearing Officers to hear and determine pre-trial matters in civil proceedings, as well as any other matters that would assist the sitting judges in their role as ultimate triers of fact. There is sufficient flexibility in the existing provisions of the CPLR to implement this recommendation.

Presently, except in matrimonial actions, in certain corporate actions or in actions where the defendant is an infant, the parties may consent to have any issue determined by a referee.²⁴ In practice, when given the opportunity for a speedy determination of an issue, the parties are more likely to consent to a determination by a referee (Judicial Hearing Officer) if they do not have to pay additional fees.

Even if a party refuses to consent, there remains authority for referees, without consent, to determine long accountings and discovery matters²⁵—two vital areas which would go a long way to easing the burden on trial judges. In the discovery area, the recent creation of formal court parts to conference personal injury cases, to set time-tables for discovery and to control discovery motion practice²⁶ offers a fertile area for the use of retired judges as Judicial Hearing Officers. In addition, referees may be appointed by the court, without consent, to hear and report back to the court for final determination in any accountings, long or otherwise, as well as in exceptional cases.²⁷ In short, a sitting judge would be empowered to assign a civil matter to a Judicial Hearing Officer for expeditious handling with or without the consent of the parties.

By creating a new position in the judiciary - Judicial Hearing Officer - and filling that position exclusively with retired judges, many of the tasks which presently burden judges can be shifted to retired judges. The impact on calendars and the resulting benefit to the public could be significant.²⁸

2. Criminal Proceedings

With the significant increase in criminal proceedings caused by an increased crime rate and a subsequent increase in arrests and trials, there is acute pressure on the criminal justice system. This pressure is compounded by the many different hearings on pre-trial motions that have become the rule in criminal proceedings.²⁹ Retired judges with experience in trying criminal cases can provide invaluable assistance to the expedition of criminal cases by freeing sitting judges from the time-consuming pre-trial processes and permitting them to devote their energy to the actual trials themselves. Similarly, the hearing of minor matters in their entirety by retired judges would free lower-court judges to try more significant matters.

Referees are not presently used in criminal proceedings. Unlike the civil side, the creation of a Judicial Hearing Officer position on the criminal side would require legislation modifying the Criminal Procedure Law to allow the use of retired judges to hear criminal matters. The Committee proposes that the Legislature be asked to authorize the use of Judicial Hearing Officers in criminal matters to hear and report on all pre-trial motions. In addition, Judicial Hearing Officers should be authorized to hear and determine, with the consent of the parties, minor criminal matters not requiring a jury.³⁰ The Committee does not foresee any constitutional problems with legislation authorizing this use of Judicial Hearing Officers in the criminal justice system in this restricted fashion.³¹ This use of Judicial Hearing Officers will expedite significantly the processing and trial of criminal cases and give rise to greater public confidence in the administration of criminal justice.

C. Judicial Hearing Officers: Eligibility, Compensation and Other Practical Considerations

1. Affected Courts

The Committee proposes that retired judges of all courts of record³² be eligible for service and that they be eligible to serve as Judicial Hearing Officers in any court regardless of where they sat at the time of retirement. The fact-finding skills honed by service as a judge are not unique to any particular court, and the issues submitted to a judicial hearing officer frequently will require no special experience in a particular court. To the extent special expertise is required, the assignment process can accommodate it.

2. Compensation

No established system for the use of Judicial Hearing Officers can operate in any comprehensive manner if they are not paid, and the present referee system has operated haphazardly and ineffectively because the source of payment was the parties themselves.

The Committee proposes that the compensation of a retired judge as a Judicial Hearing Officer be \$200 for each day of service. This is below the "going rate" paid to lawyers in private practice or to arbitrators in the private sector, yet it is a rate that, as the Committee's survey shows, will attract retired judges for service as Judicial Hearing Officers. It simply is a reality of life that highly-skilled people must receive more than token compensation if their services are to be used on a consistent basis. The Committee believes that the Legislature's appropriation of these funds for Judicial Hearing Officers is a fair price to pay for the quasi-judicial services necessary to keep the court system an effective mechanism for the expeditious dispensation of justice.

3. Status at Time of Leaving Bench

The Committee proposes that eligibility for service as a Judicial Hearing Officer be extended to all former judges, whether or not they have retired by reason of age. The utilization of the skills of a former judge should not be artificially curtailed simply because the judge's term of office may have expired before he reached retirement age. As long as a former judge is willing to serve, the court system should have the benefits of his or her talents.

4. Certification Procedure

The Committee recognizes that the skills of judges vary and that the skills of some judges may become impaired by reason of age. It is therefore critical to the success of any system using retired judges that a rigorous screening procedure be established. The Committee proposes a certification and recertification

procedure analogous to that used for certifying Supreme Court justices that would enable the character of service of each judge to be evaluated at stated intervals and that would provide for periodic screening of physical and mental abilities. It is anticipated that this certification and recertification process will make eligible for service as Judicial Hearing Officers only those former judges who are skilled and retain the physical and mental capacity to use their skills effectively. Because the system can be flexible in its use of individual retired judges as Judicial Hearing Officers, no age limit is recommended.

5. *Support Services*

The effective use of Judicial Hearing Officer cannot occur without adequate support services. Unlike attorneys in private practice, retired judges who have served full-time in their judicial capacities may not have access to office space and secretarial assistance upon leaving the bench. At the very least, retired judges used as Judicial Hearing Officers must be provided with rooms in which to conduct their hearings and secretarial support to produce their reports. Office space should be provided as well, with additional clerical and security support added where conditions warrant.

6. *Conflicts of Interest*

Use of retired judges as Judicial Hearing Officers raises questions of a conflict of interest where the retired judge also is practicing law. The Committee believes that there is an appearance of impropriety in an attorney's actively practicing in the same court in which he serves on a regular basis in a quasi-judicial capacity as a hearing officer. The Committee recommends that any program using retired judges as Judicial Hearing Officers contain safeguards, such as those set forth in the Chief Administrator's Rule Governing Judicial Conduct,³³ restricting the practice of law by such retired judges in the courts in which they will be serving.

7. *Effects on Retirement Benefits*

The Committee believes that the existing provisions of the Retirement and Social Security Law are compatible, in principle, with the use of retired judges as Judicial Hearing Officers.³⁴ The certification procedure proposed by the Committee would parallel that of the approval procedure set forth in the Retirement and Social Security Law, and there is no special reason to permit retired judges to earn more than their former judicial salaries up until the age of 72, after which limitations on salary earned do not apply. The Committee proposes that any legislation authorizing compensation for the use of retired judges as Judicial Hearing Officers carefully delineate their treatment under the Retirement and Social Security Law.

Conclusion

It has been the State's misfortune not to have tapped fully the valuable resources of retired judges in the battle against court congestion and trial delay. Retired judges are eager to continue their public service with the court system, and they bring with them expert fact-finding skills honed by years of judicial service. The broad use of retired judges as Judicial Hearing Officers, as proposed by the Committee, will be a significant step in the streamlining of the judicial process and the development of a more effective court system. In this way, the process of building public confidence in our judicial system—a confidence unfortunately shaken by delay—can be importantly enhanced.

The Committee is deeply indebted to Chief Judge Cooke for his foresight in recognizing the unused talents of retired judges, his determination to take steps to bring retired judges back into the judicial system, and his selection of the members of this Committee for the honor of undertaking this study.

Dated: October 13, 1982

Respectfully submitted,

Hon. John V. Lindsay,
Chairman
Hon. Richard Aronson
Hon. Francis Bergan
Merrell E. Clarke, Jr., Esq.
Hon. Maxine K. Duberstein
Herbert Elish, Esq.
Hon. Herbert B. Evans
Hon. Murray T. Feiden
Hon. Harry Frank
Hon. Joseph Fritsch
Abraham Fuchsberg, Esq.
Prof. Milton Gershenson
Richard Godosky, Esq.
Hon. Samuel L. Green
Hon. William Groat
Hon. Nathaniel Helman
Hon. J. Clarence Herlihy
Hon. Louis J. Lefkowitz
Hon. Norman Redlich
Hon. Burton B. Roberts

Michael Colodner, Esq.
Counsel

Notes

- 1 See Third Annual Report of the Chief Administrator of the Courts (1981) ("Annual Report"). In 1980, there was a backlog of 48,317 civil actions in the Supreme Court. In fact, the backlog in 1980 was reduced from 61,996 to 48,317, a 22.1% reduction, due to the efforts of the Chief Judge. See Annual Report at 4. These efforts included the "Plan to Reduce Court Congestion." Announced in 1979, this Plan has confronted the issue of court congestion on a number of levels and has implemented changes which include: (1) transfer of judges to create additional trial terms in Supreme Court; (2) increased bench time for judges; and (3) expanding arbitration of civil cases. Additionally, the Legislature has authorized the creation of 98 new judgeships in the Supreme Courts, County Courts and Family Courts throughout the State, in the Civil and Criminal Court in New York City, and in the Court of Claims.

- 2 The Chief Judge's charge to this Committee was sweeping - to find the best ways to use the valuable services of retired judges to reduce the congestion in the courts and to recommend statutory and even constitutional changes necessary to implement a plan that best uses their services.

- 3 A summary of the results of the questionnaire follows:

Questionnaires mailed - 235

Responses received
(as of July 9, 1982) - 130

Interested in providing quasi-judicial services for court system as referee or hearing officer:

Civil (excluding matrimonial or Surrogates)	- 85
Criminal	- 45
Matrimonial	- 52
Surrogates	- 49
Administrative (e.g., disciplinary hearings; grievances)	- 75
Pre-trial or pre-appeal settlement conferences	- 86
<i>Not interested</i> (14 retired; 2 practicing law)	- 16

Minimum compensation required (per diem):

None	- 21
\$100	- 4
125	- 2
135	- 3
150	- 14
200	- 19
250	- 14
300	- 2
350	- 3

400	- 1
500	- 4

Compensation of Supreme Court justice	- 2
Unspecified compensation	- 23

Degree of Service

Full-time service	- 34
Part-time service	- 93
Willing to continue judicial service past age 70	- 82

- 4 The State Constitution requires that all judges, other than those of city, town and village courts, retire on the last day of December in the year in which they reach the age of 70. State Constitution, Article VI, §25(b). By statute, city court judges also must retire on the last day of the year after reaching the age of 70. Judiciary Law, §23. Only town and village justices have no mandatory retirement age.

The Constitution creates an exception for Court of Appeals judges and Supreme Court justices, who may perform the duties of Supreme Court justices after the age of 70 provided that it is certificated that their services are "necessary to expedite the business of the court" and that they are "mentally and physically able and competent to perform the full duties of such office." Article VI, §25(b). A certification is valid for a term of two years, and subsequently may be extended for two additional two-year terms, provided that no judge may serve beyond the last day in December in the year in which he reaches the age of 76 (Id.). Certifications are made by the Administrative Board of the Courts, Judiciary Law, §115, which is composed of the Chief Judge of the Court of Appeals and the Presiding Justices of the four Appellate Divisions. Judiciary Law, §210(2).

- 5 The parties can consent to have a referee determine any issue, except that the court must approve and designate a referee to determine issues in matrimonial actions; actions for corporate dissolutions, or to appoint a receiver of its property or to distribute its property; or actions where the defendant is an infant. CPLR 4317(a). Only special referees may be designated to determine issues of damages in matrimonial actions. Courts may appoint referees, without consent of the parties, to determine separately triable issues of damages not requiring a jury trial, issues requiring the examination of a long account, or where otherwise required by law. CPLR 4317(b). The court must decide all other issues. CPLR 4101; 4211. A court can refer an issue to a referee to hear and report upon motion of a party, or upon

- its own motion, in matters of account or upon a showing of "some exceptional condition requiring it." CPLR 4212. Except in matrimonial actions, a person to whom all of the parties object may not be designated as a referee. CPLR 4312(a). *See also* Surrogate's Court Procedure Act §506(1) [Power of Surrogate to appoint a referee to hear and report in any Surrogate's Court proceeding other than one to probate a will or where a jury trial is demanded]; Real Property Tax Law, §720(2) [Power of court to appoint referee to hear and report in tax assessment review proceedings]. The Legislature also has created referee-type offices to hear specialized matters in Family Court support proceedings [Family Court Act, §439 (hearing examiners)], small claims tax certiorari appeals [Real Property Tax Law, §731 (hearing officers)], and landlord-tenant matters in the New York City Civil Court [Civil Court Act, §110 (housing judges)].
- 6 CPLR 3104.
 - 7 28 NYCRR Part 28; *see* CPLR 3405. Twenty-seven counties now have mandatory arbitration programs for these claims.
 - 8 *See, e.g.*, 22 NYCRR 2900.33(o) (New York City Civil Court).
 - 9 There is no specific statutory authority for expeditors.
 - 10 CPLR 4312(1) ["no person shall be designated a referee unless he is an attorney admitted to practice in the state and in good standing"]; 28 NYCRR 28.4(a) ["The members of each panel of arbitrators shall be appointed by the commissioner [of arbitration] from the list of attorneys at law admitted to practice in the State of New York."]; 29 NYCRR 2900.33(o)(1) ["The parties to any controversy ... may submit the same for arbitration to any attorney duly appointed as a small claims arbitrator."]
 - 11 At one time, retired judges and justices of the Court of Appeals and Supreme Court could be designated Official Referees pursuant to Article 4-A of the Judiciary Law. They remained on the State payroll at two-thirds of the salary of a Supreme Court Justice and heard whatever was assigned to them. After the enactment in 1962 of the certification procedures for Court of Appeals judges and Supreme Court justices in Article VI, §25(b), of the State Constitution, the office of Official Referee was abolished. *See* Judiciary Law, §116.
 - 12 The Committee examined the uses of retired judges in other jurisdictions. Responses showed an inconsistent pattern of the use of retired judges tied directly into the particular statutory and constitutional structure of the courts of the individual jurisdiction. Where a state uses retired judges, it almost always uses them in their judicial capacities in the role of senior judges. One state, California, permits the use of retired judges outside of the normal court processes of its judicial system, permitting retired judges to hear and determine cases at the convenience of the parties for a fee paid by the parties. The Committee determined that the experience of using retired judges in other jurisdictions would not be particularly helpful, given the unique structure of the courts in New York.
 - 13 CPLR 4321.
 - 14 *See Brooks v. Balaban*, 22 A.D.2d 679 (1st Dept. 1964); *Wilder v. Straus-Deperquet*, 5 A.D.2d 1, 2 (1st Dept. 1958).
 - 15 *See* CPLR 4312(5).
 - 16 In New York County, a staff of salaried law assistants serve as referees to hear and report in matrimonial actions, accounting and disclosure proceedings. While there exists a system of selecting private attorneys upon stipulation of the parties to hear and report on issues (by selection from a panel), judges are encouraged to make their references to the in-house law assistant staff.
 - 17 Some judicial districts (Fifth, Tenth, Eleventh) permit the use of referees paid by the parties; others (Third, Fourth, Sixth, Eighth, Ninth) do not even permit that. Where referees paid by the parties are used, they hear and report primarily on tax certiorari disclosure and equitable distribution matters (Fifth District), accounts of conservators (Eleventh District), and mortgage foreclosures (Tenth District). Retired judges may be selected for these references on an *ad hoc* basis; only in tax certiorari matters in the Fifth Judicial District is a retired judge, paid by the parties, used on a full-time basis.
 - 18 In addition, private attorneys paid by the parties are used as referees in incompetency accountings and by stipulation of the parties in other matters.
 - 19 Though retired judges have made a significant impact when asked to serve as referees, only approximately 25% of the retired judges who responded to the Committee's questionnaire indicated that they had served as referees since their retirement in their capacity as private attorneys.
 - 20 22 NYCRR 600.17 (First Department); 670.28 (Second Department); 1000.12 (Fourth Department).

21 See CPLR 325(d).

22 By focusing its concern upon what could be implemented in a relatively short period of time, the Committee also considered the following:

a) *Use of retired judges in their judicial capacities*

The Constitution permits only retired Supreme Court justices and Court of Appeal judges to be certificated to serve as judges past the age of 70. Any change permitting retired judges of any of the other major courts of record to continue to sit as judges and hear cases in their judicial capacities would require a constitutional amendment.

The Committee strongly supports the proposed constitutional amendment introduced by Senator Barclay, proposing the certification of judges of the County Court, Family Court, Surrogate's Court, District Court, Court of Claims, New York City Civil Court and New York City Criminal Court to serve as judges in their respective courts until the age of 76. The Committee has not incorporated in this report a formal recommendation for extending the constitutional certification process, because enactment of such an amendment is tied up with the politically sensitive area of court consolidation and would require passage by two separately-elected Legislatures and ratification by the voters. It is not something that can be implemented immediately.

The Governor recently vetoed a bill that would have provided for certification up to the age of 76 of judges of city courts. 57732-B (vetoed July 7, 1982). Unlike other judges of courts of record, the terms of city court judges are not prescribed in the Constitution and may be fixed by statute. Constitution, Article VI, §17(d); Judiciary Law, §23. The Committee believes that it would not be consistent to extend certification to one small group of trial-level judges without a comprehensive extension of this certification to all trial-level judges. It would support such a bill in conjunction with the implementation of a constitutional amendment of the type introduced by Senator Barclay.

b) *Use of retired judges as magistrates*

The federal courts use a formal system of magistrates. 28 U.S.C. §631 *et seq.* Magistrates issue search warrants and arrest warrants, hold bail hearings and preliminary examinations in criminal cases, handle arraignment of criminal defendants and may be designated to hear and

determine certain pre-trial matters, including motions to dismiss and motions for summary judgment in civil cases and motions to suppress evidence in criminal cases. 28 U.S.C. §636(a) and (b).

The Committee rejected using a magistrate system incorporating retired judges. The federal magistrate performs a role that already is performed by a lower-court judge in the State court system, and any implementation of a comparable system probably could not be limited to using retired judges and would require significant and time-consuming constitutional changes. It was not considered to be a viable alternative for using the presently-available services of retired judges.

c) *Use of retired judges as arbitrators*

The Committee rejected the formal use of retired judges in the presently-existing small-claims-type arbitration programs. The Committee believed that these informal proceedings were better suited to be handled by attorneys without introducing a formal element of judicial decision-making.

23 Domestic Relations Law, §236.

24 CPLR 4317(a).

25 CPLR 4317(b); 3104(a).

26 See 22 NYCRR 660.35 [establishing pre-calendar conference parts in New York County]; 22 NYCRR 752.21 [establishing pre-calendar conference parts in Kings County].

27 CPLR 4212. Of course, the parties may consent to have any issue heard by a referee to hear and report.

28 The use of retired judges by three of the four Appellate Divisions to attempt to settle or narrow issues in appeals to those courts has been successful and should be continued. This concept should be expanded to the trial courts for use in those cases that would be amenable to settlement before trial. No legislation is required.

29 Motions to suppress physical evidence [*Mapp v. Ohio*, 367 U.S. 643 (1961); *People v. Gatti*, 16 N.Y.2d 251 (1965)]; motions to suppress confessions and admissions [*People v. Huntley*, 15 N.Y.2d 72 (1965)]; motions to suppress identification testimony [*United States v. Wade*, 388 U.S. 218 (1967); *People v. Ballott*, 20 N.Y.2d 660 (1967)]; motions to dismiss for lack of a speedy trial [*Townsend v. Sain*, 372 U.S. 293 (1963); *People v. Dean*, 45

N.Y.2d 651 (1978); CPLR §§30.20 and 30.30); motions challenging competency to stand trial [CPL Art. 730].

- 30 Minor criminal matters not requiring a jury include class B misdemeanors (maximum sentence of 3 months) and violations (maximum sentence of 15 days). Penal Law, §70.15(2) and (4).
- 31 The creation of a judicial hearing officer who hears and determines, or hears and reports, is not the creation of a "judge" of the particular court. *Glass v. Thompson*, 51 A.D.2d 69 (2d Dept. 1976) (upholding the creation of the office of housing court judge in the New York Civil Court).
- 32 Courts of record include all courts except town, village and justice courts.
- 33 22 NYCRR 100.5(f).
- 34 All judges are members of the New York State Retirement System except those New York City judges who elected to remain members of the New York City Retirement System on April 1, 1977. See Judiciary Law, §39(9). The requirements of the Retirement and Social Security Law nevertheless apply to members of the New York City Retirement System. See RSSL, §211(1). In general, if a retired member of the State Retirement System returns to active public service, his retirement allowance ceases and he becomes a new contributing member of the System. RSSL, §101(a). This requirement applies to Supreme

Court justices and Court of Appeals judges certificated to continue to sit as judges after the age of 70. RSSL, §101(c).

However, notwithstanding this requirement, a retired member of the State Retirement System may earn the difference between the salary upon which his retirement allowance is based and the sum of his retirement allowance, while continuing to receive his retirement allowance, if his employment is approved by appropriate court administrators upon a finding that there is a need for his services, the member is competent and physically fit to perform the duties assigned and his employment is in the best interest of the government. RSSL, §211(1) and (2). This standard is substantially similar to that required for the certification of judges under the Constitution. See Constitution, Article VI, §25(a); RSSL, §211(b)(4). Approval of services under this provision may be granted for periods of up to two years each. RSSL, §212. No approval is needed, and the retirement allowance is not affected, if the retired member earns less than \$5,000 in any calendar year. RSSL, §212.

Notwithstanding even those requirements, once a retired employee reaches the age of 72, he can be employed without restriction on money earned, without the need for approval and without any effect upon retirement benefits received. RSSL, §212 This exception does not apply to certificated judges. RSSL, §101(a).

Appendix 2

Other Programs

Contents

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Retainer and Closing Statements

Under 22 NYCRR Parts 603, 551 and 1022, every attorney in a contingent fee in the First, Second and Fourth Judicial Departments* must file a Statement of Retainer with the Office of Court Administration in cases involving personal injury, property damage, wrongful death, or change of grade. This statement must be filed within 30 days of the date the lawyer is retained (15 days in the case of "of counsel" lawyers). It sets forth the date of the agreement, the terms of compensation, the agreement as to work and fee division between the original lawyer and the "of counsel" lawyer, and data about the person referring the client to the lawyer.

In addition, every such lawyer must file a closing statement with the Office of Court Administration within 15 days of the date the monies became available to him. This statement sets forth such information as the monetary amount of the settlement or award (if any). If an action was commenced, it contains the date, court and county of commencement and the method of the recovery, the person paying the recovery, the distribution of the recovery to the client and the lawyer's fees and other disbursements.

The purpose of these statements is to provide information for use by the three Appellate Divisions to prevent the charging of unconscionable fees in contingent fee cases and to discourage the unlawful solicitation of cases.

Table A-1 shows that 105,997 retainer statements were filed with the Office of Court Administration in the first 11 months of 1982. This is a sharp increase of about 24 percent from the previous year.

Table A-2 gives the court in which actions were terminated and the monetary breakdown by settlement or judgment. For cases commenced in the Supreme Court, the largest single group of cases terminated involved recoveries between \$10,000 and \$15,000. The largest single group of cases terminated in the lower courts involved recoveries between \$1,000 and \$3,000. The great majority of claims settled resulted in at least some monetary recovery. Although there were some very large recoveries, they were proportionately few; there were 2,738 recoveries in the \$50,000 to \$100,000 category and 1,669 recoveries over \$100,000.

Statements of Approval of Compensation

Section 35-a of the Judiciary Law, as originally enacted by the Legislature in 1967, required the filing of a Statement of Appointment by each person appointed by the courts to perform services in actions and proceedings for a fee or an allowance. The statute called for these statements to be filed with the Judicial

*At present, there is no filing rule for the Third Judicial Department.

Conference within 30 days of an appointment. The required information included the name and the address of the appointee, the nature of the appointment, the title of litigation, and the name of the court and the judge or justice making the appointment.

In addition, within 30 days of receiving a fee, the appointee was required to execute a Statement of Services Rendered with other pertinent data related to the fee received. Under the statute, all statements filed were to be kept as matters of public record. The law also required that an annual summary of the information in the statement be furnished to the four Appellate Divisions of the Supreme Court for use in supervising court appointments in their Judicial Departments. A total of 126,450 statements of appointment have been filed since July 1, 1967.

An extensive study of this system of two reports for each appointment revealed a number of inefficiencies. Not the least of these was the failure of many appointees to file a Statement of Services Rendered after payment of the fee. To deal with this problem, the Office of Court Administration sponsored legislation amending section 35-a which was enacted as Chapter 834, Laws of 1975, and which went into effect starting with appointments made after September 1, 1975.

Under the amended law, judges who approve fees are responsible for filing a single comprehensive statement, entitled Statement of Approval of Compensation on appointments for which the fee is more than \$200. The judges are required to send the statements to the Office of Court Administration each week for data processing and filing. Fees of \$200 or less are not required to be reported because they are believed to have little significance in the statistical study of appointments made in the court system.

In 1982 a total of 4,763 Statements of Approval of Compensation were filed with the Office of Court Administration. The new system accomplished its intended purpose of obtaining timely reports on court appointments without loss of required data provided by the older system.

Attorney Registration

Pursuant to Section 468 - a of the Judiciary Law and the Rules of the Chief Administrator (22 NYCRR Part 118), a new registration system was instituted. Under this system every attorney admitted to practice on or before January 1, 1982, whether resident or non-resident, and whether or not in good standing, was required to file a registration statement with the Chief Administrator of the Courts no later than March 1, 1982. Every registration must include a fifty dollar fee unless the attorney certifies that he or she does not intend to engage in the practice of law during the biennial registration period.

In addition, every attorney newly admitted to practice in New York State after January 1, 1982, whether resident or non-resident, and whether or not in good standing, is required to file a registration statement within 60 days of the date of such admission.

Every attorney is then required to reregister during each alternate year thereafter, within 30 days after the attorney's birthday, for as long as the attorney remains duly admitted to the New York Bar. The law also required that an attorney notify the Office of Court Administration within 30 days of any change in business or residence address as well as registration status.

As of the end of calendar year 1982, approximately 80,000 attorneys were registered with the Office of Court Administration and three and a half million dollars in registration fees collected. Half of these proceeds go to the Client Security Fund as prescribed by the Judiciary Law.

Table A-3 shows the breakdown of attorneys by county and department of business. Table A-4 gives the

breakdown of attorneys by year of birth as furnished in the registration statement.

Adoption Affidavits

According to the Rules of the respective Appellate Divisions 22 NYCRR Parts 603.22 (1st Dept.), 691.23 (2nd Dept.), 806.13 (3rd Dept.) and 1022.32 (4th Dept.) all attorneys must file an affidavit as a condition to proceed with an adoption. The objective of this filing is to maintain a record of attorneys and agencies involved in adoptions and to record the fees, if any, charged for their services.

Once the attorney has been contacted to represent a client in an adoption proceeding, the attorney prepares a petition requesting an adoption. When the petition is filed, a docket number is issued by the court. The attorney's affidavit is completed in duplicate by the attorney who files one copy with the Office of Court Administration. During 1982, 6,210 adoption affidavits were filed with the Office of Court Administration.

Table A-1
RETAINER STATEMENT FILINGS BY MONTH
January 1, 1982 through November 30, 1982

Month	Number of Statements of Retainer Filed
January	8,760
February	8,708
March	11,840
April	11,461
May	8,870
June	9,250
July	9,697
August	11,356
September	8,468
October	8,207
November	9,380
December	9,089
Total	115,066

Table A-2
Court and Monetary Breakdown of Closing Statements
January 1, 1982 through November 30, 1982

Amount of Recovery	Supreme Court		U.S. District Court		Court of Claims		County Court		Civil Court		City Courts		District Court		Justice Court		No Action*
	Settled	Judgment	Settled	Judgment	Settled	Judgment	Settled	Judgment	Settled	Judgment	Settled	Judgment	Settled	Judgment	Settled	Judgment	
1-499	167	10	16	1	...	...	5	...	146	3	6	1	13	3	4	...	205
500-999	353	10	19	...	2	...	14	...	341	5	14	1	40	4	2	...	545
1,000-1,999	1,310	17	30	...	7	...	17	...	1,020	20	43	1	63	4	2	...	1,421
2,000-2,999	1,990	18	37	2	7	...	12	...	934	15	26	2	44	5	3	...	1,567
3,000-3,999	2,618	14	37	...	12	...	7	...	639	17	31	...	28	...	...	...	1,865
4,000-4,999	2,370	19	38	2	13	...	9	...	337	6	17	...	11	...	...	...	1,447
5,000-5,999	2,681	23	39	2	7	...	9	...	201	9	3	...	7	...	...	...	1,404
6,000-6,999	2,289	11	39	1	6	...	3	...	135	3	6	1	1	...	...	...	1,007
7,000-7,999	3,049	21	53	...	8	...	5	...	95	6	2	...	3	...	...	...	1,220
8,000-8,999	3,168	17	23	...	6	...	2	...	39	1	...	...	...	...	...	...	667
9,000-9,999	2,156	12	27	...	2	...	1	...	40	2	...	...	...	...	...	...	918
10,000-14,999	5,986	60	99	3	17	...	2	...	58	5	...	...	...	...	...	...	1,999
15,000-19,999	3,055	37	70	3	4	...	3	...	26	3	...	...	...	...	...	...	615
20,000-24,999	1,925	39	57	4	3	...	...	...	14	...	...	...	...	...	...	...	322
25,000-29,999	1,426	24	54	3	1	...	...	...	4	...	...	...	...	...	...	...	225
30,000-34,999	865	22	30	1	1	...	...	...	2	...	...	...	...	...	...	...	96
35,000-49,999	1,808	52	76	2	3	...	...	...	4	...	...	...	...	...	...	...	238
50,000-99,999	2,299	66	127	1	9	...	...	...	3	...	...	...	...	...	...	...	218
100,000-up	1,357	97	111	11	3	...	...	...	...	1	...	...	...	...	...	...	...
Total With Recovery	39,382	569	982	48	111	17	86	0	4,038	86	148	6	210	18	9	2	16,066
No Recovery	993		48		24		3		272		11		16		0		4,182

NOTE: Whenever individual closing statements were filed by attorneys acting jointly in a case, each statement received was included in these tabulations. Thus, the number of statements somewhat exceeds the total number of cases closed.
 + Includes condemnation as well as tort matters.
 * Item 3 of the closing statement requires that the court and date be indicated if an action was commenced. This category includes those statements in which this item is left blank.

Table A-3
ATTORNEY REGISTRATION BY LOCATION

Location	Total	Location	Total
Albany	1,959	Otsego	69
Allegheny	41	Putnam	118
Bronx	1,070	Queens	2,371
Broome	426	Rensselaer	216
Cattaraugus	82	Richmond	422
Cayuga	79	Rockland	553
Chautauqua	158	St. Lawrence	83
Chemung	145	Saratoga	167
Chenango	57	Schenectady	314
Clinton	73	Schoharie	30
Columbia	67	Schuyler	17
Cortland	44	Seneca	36
Delaware	52	Steuben	117
Dutchess	404	Suffolk	2,101
Erie	2,257	Sullivan	140
Essex	63	Tioga	39
Franklin	55	Tompkins	161
Fulton	65	Ulster	223
Genesee	61	Warren	137
Greene	48	Washington	46
Hamilton	8	Wayne	79
Herkimer	63	Westchester	3,149
Jefferson	98	Wyoming	31
Kings	3,429	Yates	18
Lewis	15	Outside New York	
Livingston	48	State	10,178
Madison	70	Missing County	2,653
Monroe	1,842		
Montgomery	58	Total	81,618
Nassau	5,373		
New York	37,375	First Department	38,445
Niagara	281	Second Department	18,342
Oneida	386	Third Department	4,832
Onondaga	1,277	Fourth Department	7,168
Ontario	91	Outside New York	
Orange	422	State	10,178
Orleans	31	Missing County	2,653
Oswego	77		
		Total	81,618

Table A-4
ATTORNEY REGISTRATION
By Date of Birth

<i>Date of Birth</i>	<i>Total</i>
1959 and After	6
1953-1958	10,066
1948-1953	15,163
1943-1947	12,996
1938-1942	8,252
1933-1937	6,234
1928-1932	7,007
1923-1927	5,506
1918-1922	4,125
Before 1917	11,464
Total	80,819

APPENDIX 3

Family Court Statistics

Table A-5
FAMILY COURT
Court findings in Child Protective Proceedings (Boys)
January 1, 1982 through December 31, 1982

Region County	Total	Court Findings at Dispositional Hearings				Court Findings Based on	
		Child Is Abused	Child Is Neglected	Both	Neither	Establish- ment of Facts Suffi- cient to Sustain Petition	Consent of All Parties
Total New York State	3,121	181	1,802	37	1,101	1,346	1,775
Total New York City	1,447	102	950	30	365	784	663
New York	260	18	186		56	157	103
Kings	455	33	331	11	80	248	207
Queens	272	18	147	2	105	89	183
Bronx	391	27	234	17	113	262	129
Richmond	69	6	52		11	28	41
Total Upstate	1,674	79	852	7	736	562	1,112
Albany	34	14	20			33	1
Allegany	2		1		1	1	1
Broome	20	1	9		10	12	8
Cattaraugus	32	2	13		17	16	16
Cayuga	1		1				1
Chautauqua	21		14		7	7	14
Chemung	39		33		6	2	37
Chenango	9	2	2	1	4	2	7
Clinton	6	1	4		1	6	
Columbia	21		11		10	2	19
Cortland	11		10		1	2	9
Delaware	5	2	2		1	4	1
Dutchess	33	3	9		21	8	25
Erie	285	1	147	2	135	79	206
Essex							
Franklin	12		3		9	3	9
Fulton	20	3	3		14		20
Genesee	16		9		7	3	13
Greene	14	1	2		11	2	12
Hamilton	2		2			2	
Herkimer	5		4		1	4	1
Jefferson	13		2		11	1	12
Lewis	2				2		2
Livingston	18	1	11		6		18
Madison	7	2	5			3	4
Monroe	155	9	56		90	64	91
Montgomery	5		1		4		5
Nassau	153		126		27	63	90
Niagara	33	2	8		23	6	27
Oneida	1				1		1
Onondaga	150	6	99		45	104	46
Ontario	28		21		7	14	14
Orange	14			3	11	2	12
Orleans	14		10		4	6	8
Oswego	13	3	4		6	5	8
Otsego	13		12		1	11	2
Putnam	8	1			7		8
Rensselaer	6	1			5		6
Rockland	11		8		3	4	7
St. Lawrence	12	3	7		2	4	8
Saratoga	35		16		19	8	27
Schenectady	30	1	19		10	4	26
Schoharie	16		10		6	6	10
Schuyler	2	1	1			1	1
Seneca	3				3		3
Steuben	34	5	12	1	16	13	21
Suffolk	97	5	29		63	9	88
Sullivan	17				17		17
Tioga	10		5		5	4	6
Tompkins	1		1				1
Ulster	9	1	3		5	4	5
Warren	4		1		3	1	3
Washington	11	2	2		7	5	6
Wayne	32	2	20		10	18	14
Westchester	110	2	55		53	10	100
Wyoming	12	1	5		6	2	10
Yates	7	1	4		2	2	5

Table A-6
FAMILY COURT
Court Findings in Child Protective Proceedings (Girls)
January 1, 1982 through December 31, 1982

Region County	Total	Court Findings at Dispositional Hearings				Court Findings Based On	
		Child Is Abused	Child Is Neglected	Both	Neither	Establish- ment of Facts Suffi- cient to Sustain Petition	Consent of All Parties
Total New York State	3,353	346	1,798	48	1,161	1,435	1,918
Total New York City	1,449	144	924	37	344	808	641
New York	188	13	130	.....	45	115	73
Kings	530	54	369	15	92	285	245
Queens	305	31	161	3	110	117	188
Bronx	374	39	224	19	92	267	107
Richmond	52	7	40	.....	5	24	28
Total Upstate	1,904	202	874	11	817	627	1,277
Albany	44	17	27	.....	.....	44	.....
Allegany	5	1	2	.....	2	3	2
Broome	19	1	3	.....	15	10	9
Cattaraugus	31	.....	14	.....	17	12	19
Cayuga	.....	.....	.....	.....	.....	.....	.....
Chautauqua	26	.....	19	.....	7	8	18
Chemung	52	3	41	.....	8	2	50
Chenango	16	3	6	1	6	2	14
Clinton	12	2	5	.....	5	9	3
Columbia	25	1	11	.....	13	8	17
Cortland	11	1	10	.....	.....	6	5
Delaware	21	9	3	1	8	7	14
Dutchess	41	2	19	.....	20	10	31
Erie	294	12	150	.....	132	67	227
Essex	.....	.....	.....	.....	.....	.....	.....
Franklin	18	.....	2	.....	.....	1	17
Fulton	32	6	10	.....	16	4	28
Genesee	27	4	9	.....	14	4	23
Greene	7	.....	1	.....	6	.....	7
Hamilton	2	2	.....	.....	.....	2	.....
Herkimer	1	.....	1	.....	.....	1	.....
Jefferson	18	.....	3	.....	15	2	16
Lewis	9	.....	.....	.....	9	.....	9
Livingston	28	5	15	.....	8	.....	28
Madison	12	2	8	.....	2	3	9
Monroe	192	42	42	.....	108	74	118
Montgomery	5	.....	1	.....	4	.....	5
Nassau	183	1	124	1	57	73	110
Niagara	28	4	9	.....	15	12	16
Oneida	.....	.....	.....	.....	.....	.....	.....
Onondaga	173	21	100	1	51	121	52
Ontario	43	7	18	.....	18	19	24
Orange	13	1	1	3	8	5	8
Orleans	13	.....	7	.....	6	5	8
Oswego	21	3	8	.....	10	3	18
Otsego	21	2	14	.....	5	12	9
Putnam	7	2	.....	.....	5	.....	7
Rensselaer	6	1	.....	.....	5	.....	6
Rockland	11	4	5	.....	2	1	10
St. Lawrence	11	3	5	.....	3	3	8
Saratoga	21	2	9	.....	10	10	11
Schenectady	31	1	19	4	7	6	25
Schoharie	24	.....	13	.....	11	4	20
Schuyler	.....	.....	.....	.....	.....	.....	.....
Seneca	4	1	.....	.....	3	.....	4
Steuben	42	5	16	.....	21	11	31
Suffolk	79	3	35	.....	41	9	70
Sullivan	19	.....	2	.....	17	.....	19
Tioga	15	2	7	.....	6	5	10
Tompkins	8	4	1	.....	3	4	4
Ulster	6	1	2	.....	3	4	2
Warren	9	2	1	.....	6	.....	9
Washington	10	4	2	.....	4	6	4
Wayne	32	7	17	.....	8	20	12
Westchester	104	1	53	.....	50	10	94
Wyoming	18	4	3	.....	11	1	17
Yates	4	3	1	.....	.....	4	.....

Table A-7
FAMILY COURT
The Age of Children in Child Protective Proceedings Involving Child Abuse (Boys)
January 1, 1982 through December 31, 1982
Child's Age When Petition Filed (Last Birthday)

Region County	Total	Under 1	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16 or Over	Not Known
Total New York State	699	81	51	54	51	42	46	45	40	44	34	33	47	38	26	23	21	19	4
Total New York City	397	39	29	25	26	27	28	27	25	29	19	17	26	18	17	12	14	15	4
New York	42	9	4	2	7	5	2	3	3	1	3	...	...	...	2	...	...	1	...
Kings	131	7	9	10	3	10	14	12	5	9	6	10	13	6	6	4	5	2	...
Queens	62	3	2	2	4	2	...	3	4	6	3	1	4	5	4	2	5	8	4
Bronx	150	20	13	8	11	10	11	9	12	11	7	6	7	6	5	6	4	4	...
Richmond	12	...	1	3	1	...	1	...	1	2	...	...	2	1	...	...	...	...	...
Total Upstate	302	42	22	29	25	15	18	18	15	15	16	21	20	9	11	7	4	...	...
Albany	14	1	...	2	1	...	2	1	...	3	...	2	1	1	...	...	...	...	...
Allegany	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Broome	3	...	...	...	...	1	...	2	...	...	...	...	...	...	...	...	...	...	...
Cattaraugus	4	2	...	...	...	...	...	...	...	...	1	...	1	...	...	...	...	...	...
Cayuga	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Chautauqua	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Chemung	6	1	...	...	1	1	...	2	...	...	...	...	...	...	...	...	...	...	...
Chenango	5	2	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Clinton	3	...	...	1	1	...	...	...	...	1	...	...	...	...	1	1	...	...	...
Columbia	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	1	...	...	...
Cortland	8	3	1	...	...	1	...	...	...	...	...	2	...	1	...	...	...	...	...
Delaware	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Dutchess	2	1	...	...	...	...	...	...	...	...	...	1	...	...	...	...	...	...	...
Erie	21	10	6	1	2	2	...	...	...	...	...	...	...	...	...	...	...	...	...
Essex	42	3	2	3	7	3	5	3	1	4	2	2	3	1	...	2	...	1	...
Franklin	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Fulton	9	...	...	2	...	1	1	1	...	...	...	...	...	...	...	...	...	...	...
Genesee	1	1	...	...	...	1	1	1	...	...	...	...	1	...	1	1	...	1	...
Greene	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Hamilton	2	...	...	...	...	...	...	1	1	...	...	...	...	...	...	...	...	...	...
Herkimer	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Jefferson	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Lewis	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Livingston	1	...	...	...	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...
Madison	2	1	...	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Monroe	33	4	...	10	2	1	2	2	...	2	...	...	...	...	...	...	...	...	...
Montgomery	1	1	...	...	...	...	...	...	...	...	1	2	1	1	4	1	...	...	...
Nassau	30	2	2	1	3	...	1	1	2	3	2	1	5	4	...	1	2	...	...
Niagara	4	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Oneida	1	...	...	...	...	...	...	...	...	...	...	...	...	...	1	...	...	...	...
Onondaga	30	...	2	...	2	1	4	3	3	...	1	3	3	5	2	...	1	...	...
Ontario	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Orange	3	...	...	1	...	...	...	...	...	...	...	...	1	...	...	...	...	...	...
Orleans	1	...	...	...	...	...	...	...	...	1	...	...	...	...	...	...	1	...	...
Oswego	3	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Otsego	...	...	...	...	...	...	...	...	...	1	...	...	...	1	...	1	...	...	...
Putnam	1	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Rensselaer	3	...	...	1	...	...	...	...	...	...	1	...	1	...	...	...	...	...	...
Rockland	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
St. Lawrence	4	2	1	...	...	...	...	...	...	...	...	...	...	...	...	...	1	...	...
Saratoga	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Schenectady	7	...	...	1	...	...	...	...	2	1	...	1	...	1	...	1	...	...	...
Schoharie	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Schuyler	2	...	...	1	...	...	...	1	...	...	...	...	...	...	...	...	...	...	...
Seneca	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Steuben	12	2	1	...	...	...	2	1	1	...	2	...	2	1	...	...	...	...	...
Suffolk	6	...	2	2	1	...	...	1	...	...	...	...	...	...	...	...	...	...	...
Sullivan	3	1	...	...	1	...	...	...	...	...	...	...	1	...	...	...	...	...	...
Tioga	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Tompkins	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Ulster	4	2	1	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Warren	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Washington	3	1	...	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Wayne	2	...	...	...	...	...	...	...	...	...	...	...	...	1	...	...	...	...	...
Westchester	16	1	1	2	1	1	...	...	...	1	2	1	2	...	...	...	...	2	...
Wyoming	6	1	...	1	...	1	...	...	...	...	1	...	...	...	...	1	1	...	...
Yates	3	...	1	...	...	...	...	...	1	...	...	...	...	...	...	1	1	...	...

Table A-8
FAMILY COURT
The Age of Children in Child Protective Proceedings Involving Child Abuse (Girls)
January 1, 1982 through December 31, 1982
Child's Age When Petition Filed (Last Birthday)

Region County	Total	Under 1	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16 or Over	Not Known
Total New York State	1,031	60	51	56	47	59	54	35	48	53	44	57	67	54	85	95	74	90	2
Total New York City	475	31	26	36	22	33	30	23	30	28	19	27	28	22	25	36	20	37	2
New York	39	5	3	2	1	5	3	1	2	4	1	4	3	1	1	1	1	1	...
Kings	188	13	11	17	9	11	12	11	10	11	6	11	14	6	11	11	8	14	2
Queens	94	6	4	2	3	4	9	2	4	7	3	6	8	4	9	9	6	13	...
Bronx	142	7	8	12	9	13	5	8	12	6	9	6	8	9	4	12	5	9	...
Richmond	12	...	...	3	...	...	1	1	2	...	...	...	...	2	...	3	...	...	...
Total Upstate	556	29	25	20	25	26	24	12	18	25	25	30	39	32	60	59	54	53	...
Albany	17	...	1	...	...	1	...	...	1	1	1	1	1	...	2	5	2	1	...
Allegany	2	...	...	...	...	...	...	...	1	...	...	...	1	...	...	...	...	...	...
Broome	8	...	...	...	1	...	1	...	1	1	...	1	...	...	1	...	1	1	...
Cattaraugus	6	2	...	...	...	...	...	...	1	1	...	1	...	...	1	...	...	...	...
Cayuga	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Chautauqua	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	1	...	...	...
Chemung	10	...	1	1	...	...	1	...	1	...	2	...	...	1	...	...	1	2	...
Chenango	8	...	1	...	...	...	...	...	...	...	...	...	1	1	1	2	1	1	...
Clinton	7	...	...	...	1	1	...	...	...	...	1	1	...	...	...	1	1	1	...
Columbia	8	2	...	...	...	1	...	1	...	1	...	...	...	...	3	...	...	...	...
Cortland	1	...	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Delaware	19	...	1	...	1	1	...	1	...	...	1	3	3	...	2	1	3	2	...
Dutchess	21	2	2	...	2	2	...	1	...	1	...	...	2	...	3	2	4	...	...
Erie	69	4	5	2	5	5	4	...	1	4	...	3	6	5	8	5	6	6	...
Essex	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Franklin	2	...	...	1	...	...	...	...	...	...	...	...	...	...	...	1	...	...	...
Fulton	13	...	1	...	1	...	1	...	2	1	...	2	1	3	...	1	...	...	...
Genesee	7	...	...	...	...	...	...	1	...	...	...	...	1	...	3	...	1	1	...
Greene	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	1	...	...
Hamilton	2	...	...	...	...	...	...	...	...	...	...	...	1	...	...	...	...	...	...
Herkimer	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Jefferson	3	...	...	...	...	...	...	...	...	1	1	...	1	...	...	...	...	...	...
Lewis	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Livingston	6	1	1	...	...	...	...	...	...	1	...	...	...	...	...	1	1	1	...
Madison	3	...	...	1	...	...	...	...	...	...	1	...	...	...	...	...	1	...	...
Monroe	76	6	2	2	3	6	3	1	2	...	3	8	1	4	11	12	6	3	...
Montgomery	2	...	1	...	...	...	...	...	...	...	...	...	1	...	...	...	...	...	...
Nassau	34	2	1	1	1	...	2	2	1	2	2	1	3	2	1	4	2	7	...
Niagara	5	...	...	...	...	1	...	...	...	1	...	...	1	...	1	1	...	...	...
Oneida	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Onondaga	56	4	3	2	6	1	2	...	1	3	3	...	1	5	6	6	5	5	...
Ontario	13	...	...	...	2	1	2	...	1	...	1	2	...	1	1	...	1	1	...
Orange	7	...	...	...	...	1	1	...	...	1	...	...	...	1	1	...	1	1	...
Orleans	6	...	1	...	...	...	...	1	...	...	1	...	...	...	1	...	1	1	...
Oswego	5	...	...	...	...	...	...	...	...	...	...	1	1	1	...	...	...	2	...
Otsego	3	1	...	1	...	...	...	...	...	...	...	...	...	...	...	...	1	...	...
Putnam	2	1	...	...	...	...	...	...	...	...	...	1	...	...	...	...	...	...	...
Rensselaer	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	1	...
Rockland	4	...	...	...	...	1	...	...	1	...	...	...	...	...	2	...	...	...	...
St. Lawrence	3	...	...	...	...	...	...	...	...	...	...	...	...	1	1	1	...	...	...
Saratoga	4	...	...	1	...	...	1	...	...	1	...	...	...	...	...	...	...	...	...
Schenectady	19	...	1	...	1	2	2	1	1	1	2	...	2	1	1	2	1	1	...
Schoharie	1	...	...	...	...	...	...	...	...	...	1	...	...	...	...	...	...	...	...
Schuyler	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Seneca	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	1	...
Sieuben	21	...	...	2	...	...	1	...	...	1	1	1	...	1	4	2	4	4	...
Suffolk	11	1	1	2	1	1	...	...	...	...	...	...	...	1	...	1	1	2	...
Sullivan	4	...	...	...	...	...	...	1	1	...	...	...	...	1	1	1	...	...	...
Tioga	3	...	...	...	...	...	...	...	...	1	...	...	...	...	1	1	...	...	...
Tompkins	6	...	...	...	...	...	...	...	...	...	...	...	1	2	...	2	...	1	...
Ulster	5	...	...	...	...	1	...	1	...	2	...	...	...	...	1	1	...	...	...
Warren	5	...	...	...	...	...	...	...	...	...	...	1	...	...	2	...	...	1	...
Washington	6	...	...	...	...	...	...	...	...	...	1	...	...	...	...	2	...	...	...
Wayne	8	...	1	...	...	...	...	...	...	...	...	1	1	1	3	...	1	...	...
Westchester	21	3	1	3	...	...	2	1	1	1	1	1	...	2	1	2	2	...	...
Wyoming	7	...	...	...	...	...	1	...	...	...	...	...	1	...	2	3	...	...	...
Yates	3	...	...	...	...	...	...	...	1	...	1	...	1	...	...	...	...	...	...

Table A-9
FAMILY COURT
Reasons for Petitions in Child Protective Proceedings Involving Child Abuse (Boys)
January 1, 1982 through December 31, 1982

Region County	Total Reasons (Child Abuse Only)	Reasons for Petitions													
		Child Abuse			Neglected Child										
		Physical Abuse	Risk of Physical Injury	Sex Offense Against Child	Impair- ment of Mental, Emo- tional or Physi- cal Health	Inade- quate Food, Shel- ter or Cloth- ing	Inade- quate Educa- tional Care	Inade- quate Medi- cal or Surgical Care	Aban- don- ment or De- ser- tion	Par- ental Use of Drugs	Par- ental Alco- holic- ism	Par- ental Sexual Mis- con- duct	Par- ental Mental Illness	Par- ental Fight- ing	Other
Total New York State	227	127	43	57	31	5	4	4	2	3	5	4	2	...	...
Total New York City	143	81	25	37	17	3	2	3	2	3	5	3	2	...	...
New York	15	13	...	2	3	...	...	...	...	1	1	...	1	...	...
Kings	58	18	12	28	12	3	1	...	...	1	4	3	1	...	...
Queens	22	13	5	4	...	...	1	2	1	...	...	...	...	...	...
Bronx	43	32	8	3	1	...	...	...	1	...	...	...	...	...	...
Richmond	5	5	...	...	1	...	...	...	1	1	...	...	...	...	...
Total Upstate	84	46	18	20	14	2	2	1	...	...	...	1	...	...	...
Albany	14	3	8	3	...	...	...	...	...	...	...	...	...	...	...
Allegany	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Broome	1	1	...	...	...	...	...	...	...	...	...	...	...	...	...
Cattaraugus	2	2	...	...	...	...	...	...	...	...	...	...	...	...	...
Cayuga	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Chautauqua	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Chemung	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Chenango	1	1	...	...	2	1	...	1	...	...	...	...	...	...	...
Clinton	...	...	...	...	1	...	...	...	...	...	...	...	...	...	...
Columbia	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Cortland	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Delaware	2	1	...	1	...	...	...	...	...	...	...	...	...	...	...
Dutchess	3	...	3	...	...	...	...	...	...	...	...	...	...	...	...
Erie	1	...	1	...	2	...	...	...	...	...	...	...	...	...	...
Essex	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Franklin	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Fulton	2	...	...	2	3	1	...	...	...	...	...	...	...	...	...
Genesee	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Greene	1	...	...	1	...	...	...	...	...	...	...	...	...	...	...
Hamilton	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Herkimer	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Jefferson	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Lewis	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Livingston	1	...	...	1	...	...	...	...	...	...	...	...	...	...	...
Madison	2	2	...	...	...	...	...	...	...	...	...	...	...	...	...
Monroe	10	8	...	2	2	...	...	...	...	...	...	...	...	...	...
Montgomery	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Nassau	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Niagara	1	...	...	1	1	...	...	...	...	...	...	...	...	...	...
Oneida	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Onondaga	6	3	...	3	...	...	...	...	...	...	...	...	...	...	...
Ontario	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Orange	6	3	3	...	...	...	...	...	...	...	...	...	...	...	...
Orleans	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Oswego	...	...	...	...	3	...	1	...	...	...	...	...	...	...	...
Otsego	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Pulnam	1	1	...	...	...	...	...	...	...	...	...	...	...	...	...
Rensselaer	1	1	...	...	...	...	...	...	...	...	...	...	...	...	...
Rockland	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
St. Lawrence	3	2	...	1	...	...	...	...	...	...	...	...	...	...	...
Saratoga	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Schenectady	2	1	...	1	...	...	...	...	...	...	...	...	...	...	...
Schoharie	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Schuyler	1	1	...	...	...	...	...	...	...	...	...	...	...	...	...
Seneca	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Steuben	7	4	1	2	...	...	1	...	...	...	...	...	...	...	...
Suffolk	5	5	...	...	...	...	...	...	...	...	...	...	...	...	...
Sullivan	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Tioga	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Tompkins	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Ulster	2	1	1	...	...	...	...	...	...	...	...	...	...	...	...
Warren	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Washington	2	2	...	...	...	...	...	...	...	...	...	...	...	...	...
Wayne	2	...	...	2	...	...	...	...	...	...	...	...	...	...	...
Westchester	2	2	...	...	...	...	...	...	...	...	...	...	...	...	...
Wyoming	1	1	...	...	...	...	...	...	...	...	...	...	...	...	...
Yates	2	1	1	...	...	...	...	...	...	...	...	...	...	...	...

Due to the reporting of multiple reasons for petitions, the number of reasons exceeds the number of petitions reported as initially disposed.

Table A-10
FAMILY COURT
Reasons for Petitions in Child Protective Proceedings Involving Child Abuse (Girls)
January 1, 1982 through December 31, 1982

Region County	Total Reasons (Child Abuse Only)	Reasons for Petitions													
		Child Abuse				Neglected Child									
		Physical Abuse	Risk of Physical Injury	Sex Offense Against Child	Impair- ment of Mental, Emo- tional or Physi- cal Health	Inade- quate Food, Shel- ter or Cloth- ing	Inade- quate Educa- tional Care	Inade- quate Medi- cal or Surgical Care	Aban- don- ment or Der- sion	Par- ental Use of Drugs	Par- ental Alco- holic	Par- ental Sexual Mis- con- duct	Par- ental Mental Illness	Par- ental Fight- ing	Other
Total New York State	417	109	48	250	40	12	2	7	3	2	3	8	2	1	1
Total New York City	196	75	31	90	27	11	...	7	3	2	3	4	2	1	...
New York	13	3	2	8	2	...	...	...	...	...	1	1	...	1	...
Kings	83	26	20	37	20	8	...	6	2	2	2	2	2	...	...
Queens	34	17	2	15	5	3	...	1	1	...	...	1	...	...	...
Bronx	59	23	6	30	...	...	...	...	...	...	...	...	...	...	...
Richmond	7	6	1	...	...	...	...	...	...	...	...	...	...	...	...
Total Upstate	221	34	17	170	13	1	2	...	...	...	...	4	...	...	1
Albany	15	4	3	8	...	...	2	...	...	...	...	...	...	...	...
Allegany	1	...	...	1	...	...	...	...	...	...	...	...	...	...	...
Broome	1	1	...	...	...	...	...	...	...	...	...	...	...	...	...
Cattaraugus	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Cayuga	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Chautauqua	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Chemung	3	...	...	3	...	...	...	...	...	...	...	...	...	...	...
Chenango	4	1	...	3	...	...	...	...	...	...	...	...	...	...	...
Clinton	3	1	...	2	...	...	...	...	...	...	...	...	...	...	...
Columbia	1	...	1	...	...	...	...	...	...	...	...	...	...	...	...
Cortland	...	...	...	...	1	...	...	...	...	...	...	...	...	...	...
Delaware	9	2	...	7	1	...	...	...	...	...	...	...	...	...	...
Dutchess	2	...	1	1	...	...	...	...	...	...	...	...	...	...	...
Erie	12	3	1	8	...	...	...	...	...	...	...	...	...	...	...
Essex	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Franklin	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Fulton	6	...	...	6	6	1	...	...	...	...	...	...	...	...	...
Genesee	4	...	...	4	...	...	...	...	...	...	...	1	...	...	...
Greene	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Hamilton	2	...	...	2	...	...	...	...	...	...	...	...	...	...	...
Herkimer	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Jefferson	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Lewis	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Livingston	5	...	...	5	...	...	...	...	...	...	...	...	...	...	...
Madison	2	1	...	1	...	...	...	...	...	...	...	...	...	...	...
Monroe	43	2	4	37	1	...	...	...	...	...	...	1	...	...	...
Montgomery	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Nassau	2	...	...	2	2	...	...	...	...	...	...	...	...	...	...
Niagara	4	1	...	3	...	...	...	...	...	...	...	...	...	...	...
Oneida	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Onondaga	26	6	1	19	...	...	...	...	...	...	...	...	...	...	...
Ontario	7	1	...	6	1	...	...	...	...	...	...	1	...	...	1
Orange	9	4	4	1	...	...	...	...	...	...	...	...	...	...	...
Orleans	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Oswego	3	...	...	3	...	...	...	...	...	...	...	...	...	...	...
Otsego	2	2	...	...	...	...	...	...	...	...	...	...	...	...	...
Putnam	2	1	1	...	...	...	...	...	...	...	...	...	...	...	...
Rensselaer	1	...	...	1	...	...	...	...	...	...	...	...	...	...	...
Rockland	4	...	...	4	...	...	...	...	...	...	...	...	...	...	...
St. Lawrence	3	...	...	3	...	...	...	...	...	...	...	...	...	...	...
Saratoga	2	1	...	1	...	...	...	...	...	...	...	...	...	...	...
Schenectady	6	1	1	4	...	...	...	...	...	...	...	...	...	...	...
Schoharie	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Schuyler	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Seneca	1	...	...	1	...	...	...	...	...	...	...	...	...	...	...
Steuben	5	1	...	4	...	...	...	...	...	...	...	...	...	...	...
Suffolk	3	...	...	3	...	...	...	...	...	...	...	1	...	...	...
Sullivan	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Tioga	2	...	...	2	...	...	...	...	...	...	...	...	...	...	...
Tompkins	4	...	...	4	...	...	...	...	...	...	...	...	...	...	...
Ulster	1	1	...	...	1	...	...	...	...	...	...	...	...	...	...
Warren	2	...	...	2	...	...	...	...	...	...	...	...	...	...	...
Washington	4	...	...	4	...	...	...	...	...	...	...	...	...	...	...
Wayne	7	...	...	7	...	...	...	...	...	...	...	...	...	...	...
Westchester	1	...	...	1	...	...	...	...	...	...	...	...	...	...	...
Wyoming	4	...	...	4	...	...	...	...	...	...	...	...	...	...	...
Yates	3	...	...	3	...	...	...	...	...	...	...	...	...	...	...

Due to the reporting of multiple reasons for petitions, the number of reasons exceeds the number of petitions reported as initially disposed.

Table A-11
FAMILY COURT
Child Protective Proceedings Involving Child Abuse (Boys)
Types of Petitioners
January 1, 1982 through December 31, 1982

Region County	Total	Petition Originated By													
		Re- spon- dent's Parent	Re- spon- dent's Child	Re- spon- dent's Spouse or Former Spouse	Other Members of Re- spon- dent's Family or House- hold	Corpor- ation Counsel/ County Attorney	Asis- tant District Attorney	Police or Peace Officer	Public Social Services Agency	Public Health Agency	Author- ized Private Agency	School (on Court's Motion)	Hospi- tal (on Court's Motion)	Private Medical Doctor (on Court's Motion)	Other
Total New York State	699	2	...	2	...	2	1	4	630	6	51	1	...	...	...
Total New York City	397	2	...	1	...	1	...	...	336	6	51	...	...	...	...
New York	42	...	...	...	...	...	...	...	41	1	...	...	...	...	...
Kings	131	1	...	...	...	1	...	...	100	...	29	...	...	...	...
Queens	62	1	...	1	...	...	...	...	37	1	22	...	...	...	...
Bronx	150	...	...	...	...	...	...	...	146	4	...	...	...	...	...
Richmond	12	...	...	...	...	...	...	...	12	...	...	...	...	...	...
Total Upstate	302	...	...	1	...	1	1	4	294	...	...	1	...	...	...
Albany	14	...	...	...	...	...	...	...	14	...	...	...	...	...	...
Allegany	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Broome	3	...	...	...	...	...	...	...	3	...	...	...	...	...	...
Cattaraugus	4	...	...	...	...	...	...	...	4	...	...	...	...	...	...
Cayuga	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Chautauqua	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Chemung	6	...	...	...	...	...	...	...	6	...	...	...	...	...	...
Chenango	5	...	...	...	...	...	...	...	5	...	...	...	...	...	...
Clinton	3	...	...	...	...	...	...	...	3	...	...	...	...	...	...
Columbia	8	...	...	...	...	...	...	...	8	...	...	...	...	...	...
Cortland	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Delaware	2	...	...	...	...	...	...	...	2	...	...	...	...	...	...
Dutchess	21	...	...	...	...	...	...	...	21	...	...	...	...	...	...
Erie	42	...	...	...	...	...	...	1	41	...	...	...	...	...	...
Essex	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Franklin	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Fulton	9	...	...	...	...	...	...	...	9	...	...	...	...	...	...
Genesee	1	...	...	...	...	...	...	...	1	...	...	...	...	...	...
Greene	2	...	...	...	...	...	...	...	2	...	...	...	...	...	...
Hamilton	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Herkimer	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Jefferson	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Lewis	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Livingston	1	...	...	...	...	...	...	...	1	...	...	...	...	...	...
Madison	2	...	...	...	...	...	...	...	2	...	...	...	...	...	...
Monroe	33	...	...	1	...	...	...	...	28	...	...	...	...	...	...
Montgomery	1	...	...	...	...	...	1	3	1	...	...	...	...	...	...
Nassau	30	...	...	...	...	...	...	...	30	...	...	...	...	...	...
Niagara	4	...	...	...	...	...	...	...	4	...	...	...	...	...	...
Oneida	1	...	...	...	...	...	...	...	1	...	...	...	...	...	...
Onondaga	30	...	...	...	...	...	...	...	30	...	...	...	...	...	...
Ontario	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Orange	3	...	...	...	...	...	...	...	3	...	...	...	...	...	...
Orleans	1	...	...	...	...	...	...	...	1	...	...	...	...	...	...
Oswego	3	...	...	...	...	...	...	...	3	...	...	...	...	...	...
Otsego	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Putnam	1	...	...	...	...	...	...	...	1	...	...	...	...	...	...
Rensselaer	3	...	...	...	...	...	...	...	3	...	...	...	...	...	...
Rockland	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
St. Lawrence	4	...	...	...	...	...	...	...	4	...	...	...	...	...	...
Saratoga	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Schenectady	7	...	...	...	...	...	...	...	7	...	...	...	...	...	...
Schoharie	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Schuyler	2	...	...	...	...	...	...	...	2	...	...	...	...	...	...
Seneca	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Steuben	12	...	...	...	...	...	...	...	12	...	...	...	...	...	...
Suffolk	6	...	...	...	...	...	...	...	6	...	...	...	...	...	...
Sullivan	3	...	...	...	...	...	...	...	3	...	...	...	...	...	...
Tioga	1	...	...	...	...	...	...	...	1	...	...	...	...	...	...
Tompkins	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Ulster	4	...	...	...	...	...	...	...	4	...	...	...	...	...	...
Warren	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Washington	3	...	...	...	...	...	...	...	3	...	...	...	...	...	...
Wayne	2	...	...	...	...	...	...	...	2	...	...	...	...	...	...
Westchester	16	...	...	...	...	1	...	...	14	...	...	1	...	...	...
Wyoming	6	...	...	...	...	...	...	...	6	...	...	...	...	...	...
Yates	3	...	...	...	...	...	...	...	3	...	...	...	...	...	...

Table A-12
FAMILY COURT
Child Protective Proceedings Involving Child Abuse (Girls)
Types of Petitioners
January 1, 1982 through December 31, 1982

Region County	Total	Petition Originated by													
		Re- spon- dent's Parent	Re- spon- dent's Child	Re- spon- dent's Spouse or Former Spouse	Other Members of Re- spon- dent's Family or Home- hold	Corpor- ation Counsel/ County Attorney	Assis- tant District Attorney	Police or Peace Officer	Public Social Services Agency	Public Health Agency	Author- ized Private Agency	School (On Court's Motion)	Hospi- tal (On Court's Motion)	Private Medical Doctor (On Court's Motion)	Other
Total New York State	1,031	6	...	3	1	2	...	3	899	11	104	...	...	...	2
Total New York City	475	1	...	3	...	2	...	2	358	7	102	...	...	...	...
New York	39	...	...	...	...	1	...	2	35	...	1	...	...	...	...
Kings	188	...	...	...	...	1	...	...	118	...	69	...	...	...	...
Queens	94	1	...	3	...	...	...	...	56	2	32	...	...	...	...
Bronx	142	...	...	...	...	...	...	...	137	5	...	...	...	...	...
Richmond	12	...	...	...	...	...	...	...	12	...	...	...	...	...	...
Total Upstate	556	5	...	...	1	...	...	1	541	4	2	...	...	...	2
Albany	17	...	...	...	...	...	...	...	17	...	...	...	...	...	...
Allegany	2	...	...	...	...	...	...	...	2	...	...	...	...	...	...
Broome	8	...	...	...	...	...	...	...	8	...	...	...	...	...	...
Cattaraugus	6	...	...	...	...	...	...	...	6	...	...	...	...	...	...
Cayuga	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Chautauqua	1	...	...	...	...	...	...	...	1	...	...	...	...	...	...
Chemung	10	...	...	...	...	...	...	...	10	...	...	...	...	...	...
Chenango	8	...	...	...	...	...	...	...	8	...	...	...	...	...	...
Clinton	7	...	...	...	...	...	...	...	7	...	...	...	...	...	...
Columbia	8	...	...	...	...	...	...	...	8	...	...	...	...	...	...
Cortland	1	...	...	...	...	...	...	...	1	...	...	...	...	...	...
Delaware	19	...	...	...	...	...	...	...	19	...	...	...	...	...	...
Dutchess	21	1	...	...	...	...	...	...	20	...	...	...	...	...	...
Erie	69	...	...	...	...	...	...	...	68	1	...	...	...	...	...
Essex	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Franklin	2	...	...	...	...	...	...	...	2	...	...	...	...	...	...
Fulton	13	3	...	...	...	...	...	...	10	...	...	...	...	...	...
Genesee	7	...	...	...	...	...	...	...	6	1	...	...	...	...	...
Greene	1	...	...	...	...	...	...	...	1	...	...	...	...	...	...
Hamilton	2	...	...	...	...	...	...	...	2	...	...	...	...	...	...
Herkimer	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Jefferson	3	...	...	...	...	...	...	...	3	...	...	...	...	...	...
Lewis	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Livingston	6	...	...	...	...	...	...	...	6	...	...	...	...	...	...
Madison	3	...	...	...	...	...	...	...	3	...	...	...	...	...	...
Monroe	76	...	...	...	...	...	...	...	74	1	...	...	...	...	1
Montgomery	2	...	...	...	...	...	...	...	2	...	...	...	...	...	...
Nassau	34	...	...	...	...	...	...	...	34	...	...	...	...	...	...
Niagara	5	...	...	...	...	...	...	...	5	...	...	...	...	...	...
Oneida	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Onondaga	56	...	...	...	...	...	...	...	56	...	...	...	...	...	...
Ontario	13	...	...	...	...	...	...	...	13	...	...	...	...	...	...
Orange	7	...	...	...	...	...	...	...	7	...	...	...	...	...	...
Orleans	6	...	...	...	...	...	...	...	6	...	...	...	...	...	...
Oswego	5	...	...	...	...	...	...	...	5	...	...	...	...	...	...
Otsego	3	...	...	...	...	...	...	...	3	...	...	...	...	...	...
Putnam	2	...	...	...	...	...	...	...	2	...	...	...	...	...	...
Rensselaer	1	...	...	...	...	...	...	...	1	...	...	...	...	...	...
Rockland	4	...	...	...	...	...	...	...	4	...	...	...	...	...	...
St. Lawrence	3	...	...	...	...	...	...	...	3	...	...	...	...	...	...
Saratoga	4	...	...	...	1	...	...	...	3	...	...	...	...	...	...
Schenectady	19	...	...	...	...	...	...	...	17	...	2	...	...	...	...
Schoharie	1	...	...	...	...	...	...	...	1	...	...	...	...	...	...
Schuyler	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Seneca	1	...	...	...	...	...	...	...	1	...	...	...	...	...	...
Steuben	21	...	...	...	...	...	...	...	21	...	...	...	...	...	...
Suffolk	11	...	...	...	...	...	...	...	11	...	...	...	...	...	...
Sullivan	4	...	...	...	...	...	...	1	3	...	...	...	...	...	...
Tioga	3	...	...	...	...	...	...	...	3	...	...	...	...	...	...
Tompkins	6	...	...	...	...	...	...	...	6	...	...	...	...	...	...
Ulster	5	...	...	...	...	...	...	...	5	...	...	...	...	...	...
Warren	5	...	...	...	...	...	...	...	5	...	...	...	...	...	...
Washington	6	...	...	...	...	...	...	...	5	...	...	...	...	...	1
Wayne	8	...	...	...	...	...	...	...	8	...	...	...	...	...	...
Westchester	21	1	...	...	...	...	...	...	20	...	...	...	...	...	...
Wyoming	7	...	...	...	...	...	...	...	7	...	...	...	...	...	...
Yates	3	...	...	...	...	...	...	...	2	1	...	...	...	...	...

Table A-13
FAMILY COURT
Temporary Removal of Children in Child Protective
Proceedings Involving Child Abuse (Boys Only)
January 1, 1982 through December 31, 1982

Region County	Total*	No Temporary Re- moval	Temporary Removal		Length of Removal After Petition									
			Before Petition	After Petition	1-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 Days or More	
Total New York State	699	218	107	473	15	14	14	12	117	130	131	35	5	
Total New York City	397	97	6	300	8	5	10	4	64	82	100	24	3	
New York	42	9	5	33	...	1	...	...	13	16	2	1	...	
Kings	131	30	1	101	2	3	5	2	17	26	37	9	...	
Queens	62	35	...	27	1	1	2	...	8	5	6	4	...	
Bronx	150	23	...	127	4	...	3	2	25	33	48	9	3	
Richmond	12	...	...	12	1	...	...	...	1	2	7	1	...	
Total Upstate	302	121	101	173	7	9	4	8	53	48	31	11	2	
Albany	14	3	1	11	1	1	...	...	3	1	1	4	...	
Allegany	...	...	...	...	...	...	...	...	...	...	...	...	...	
Broome	3	1	1	1	...	...	...	...	...	...	...	...	...	
Cattaraugus	4	2	1	2	...	...	...	1	...	...	...	1	...	
Cayuga	...	...	...	...	...	...	...	...	...	...	...	...	...	
Chautauqua	...	...	...	...	...	...	...	...	...	...	...	...	...	
Chemung	6	1	4	5	...	...	...	...	5	...	...	...	...	
Chenango	5	2	3	3	...	...	...	...	2	1	...	...	...	
Clinton	3	...	1	3	...	...	...	...	3	...	...	...	...	
Columbia	8	1	7	7	1	...	...	...	...	6	...	...	...	
Cortland	...	...	...	...	...	...	...	...	...	...	...	...	...	
Delaware	2	2	...	...	...	...	...	...	...	...	...	...	...	
Dutchess	21	2	15	19	...	...	...	4	13	2	...	...	...	
Erie	42	20	...	22	1	4	1	...	10	3	3	...	...	
Essex	...	...	...	...	...	...	...	...	...	...	...	...	...	
Franklin	...	...	...	...	...	...	...	...	...	...	...	...	...	
Fulton	9	2	7	7	2	...	...	...	...	1	...	...	1	
Genesee	1	...	...	1	...	...	...	...	1	1	3	...	...	
Greene	2	1	...	1	...	1	...	...	...	...	...	...	...	
Hamilton	...	...	...	...	...	...	...	...	...	...	...	...	...	
Herkimer	...	...	...	...	...	...	...	...	...	...	...	...	...	
Jefferson	...	...	...	...	...	...	...	...	...	...	...	...	...	
Lewis	...	...	...	...	...	...	...	...	...	...	...	...	...	
Livingston	1	1	...	...	...	...	...	...	...	...	...	...	...	
Madison	2	...	...	2	...	...	...	...	...	2	...	...	...	
Monroe	33	16	7	17	...	...	...	...	3	8	5	...	...	
Montgomery	1	1	...	...	...	...	...	...	...	...	...	...	...	
Nassau	30	14	11	16	...	1	...	1	5	1	7	1	...	
Niagara	4	1	3	2	...	...	2	...	...	...	...	...	...	
Oneida	1	1	...	...	...	...	...	...	...	...	...	...	...	
Onondaga	30	16	5	14	...	...	...	1	2	6	3	2	...	
Ontario	...	...	...	...	...	...	...	...	...	...	...	...	...	
Orange	3	1	...	2	...	...	...	...	...	2	...	...	...	
Orleans	1	...	...	1	...	...	...	...	...	...	1	...	...	
Oswego	3	3	...	...	...	...	...	...	...	...	...	...	...	
Otsego	...	...	...	...	...	...	...	...	...	...	...	...	...	
Putnam	1	1	...	...	...	...	...	...	...	...	...	...	...	
Rensselaer	3	...	3	2	...	...	...	...	2	...	...	...	...	
Rockland	...	...	...	...	...	...	...	...	...	...	...	...	...	
St. Lawrence	4	2	1	2	...	...	1	...	...	1	...	...	...	
Saratoga	...	...	...	...	...	...	...	...	...	...	...	...	...	
Schenectady	7	5	2	2	...	1	...	...	1	...	...	...	...	
Schoharie	...	...	...	...	...	...	...	...	...	...	...	...	...	
Schuyler	2	...	2	2	...	...	...	1	1	...	...	...	...	
Seneca	...	...	...	...	...	...	...	...	...	...	...	...	...	
Steuben	12	4	7	6	...	...	...	...	...	5	1	...	...	
Suffolk	6	3	3	3	1	...	...	...	...	...	...	2	...	
Sullivan	3	1	...	2	...	...	...	...	...	1	1	...	...	
Tioga	1	1	...	...	...	...	...	...	...	...	...	...	...	
Tompkins	...	...	...	...	...	...	...	...	...	...	...	...	...	
Ulster	4	2	1	2	...	...	...	...	...	...	1	...	1	
Warren	...	...	...	...	...	...	...	...	...	...	...	...	...	
Washington	3	2	1	...	...	...	...	...	...	...	...	...	...	
Wayne	2	...	2	2	...	...	...	...	...	...	2	...	...	
Westchester	16	3	12	11	...	...	...	...	1	6	3	1	...	
Wyoming	6	5	...	1	1	...	...	...	...	...	...	...	...	
Yates	3	1	1	2	...	...	...	...	...	2	...	...	...	

*Figures in columns 2, 3, and 4 exceed total because some proceedings are included in both columns 3 and 4.
There were 99 such proceedings statewide.

Table A-14
FAMILY COURT
Temporary Removal of Children in Child Protective
Proceedings Involving Child Abuse (Girls Only)
January 1, 1982 through December 31, 1982

Region County	Total*	No Tempo- rary Re- moval	Temporary Removal		Length of Removal After Petition								
			Before Petition	After Petition	1-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 Days or More
Total New York State	1,031	356	189	652	14	19	27	25	190	181	164	29	3
Total New York City	475	120	6	355	4	7	15	3	70	119	114	23	...
New York	39	7	5	32	...	1	1	1	14	11	4	...	...
Kings	188	39	...	149	1	3	14	2	21	55	42	11	...
Queens	94	48	1	46	2	3	...	...	16	16	6	3	...
Bronx	142	24	...	118	1	...	...	...	19	34	55	9	...
Richmond	12	2	...	10	...	...	...	...	...	3	7	...	...
Total Upstate	556	236	183	297	10	12	12	22	120	62	50	6	3
Albany	17	8	...	9	...	1	...	...	4	2	1	1	...
Allegany	2	1	...	1	...	...	1	...	...	...	...	...	...
Broome	8	2	...	6	...	...	...	1	5	...	...	...	...
Cattaraugus	6	5	1	1	...	...	...	...	1	...	...	...	...
Cayuga	...	...	...	...	...	...	...	...	...	...	...	...	...
Chautauqua	1	...	1	1	...	...	...	...	1	...	...	...	...
Chemung	10	3	3	7	...	...	...	...	3	4	...	...	...
Chenango	8	1	7	6	...	...	...	...	4	1	1	...	...
Clinton	7	2	...	5	...	...	...	...	5	...	...	...	...
Columbia	8	1	6	7	...	1	...	...	2	1	3	...	...
Cortland	1	...	1	1	...	...	...	...	...	...	...	1	...
Delaware	19	5	13	11	...	...	...	...	10	1	...	...	...
Dutchess	21	2	14	19	...	...	...	9	10	...	...	...	...
Erie	69	33	1	35	...	4	3	2	13	6	7	...	...
Essex	...	...	...	...	...	...	...	...	...	...	...	...	...
Franklin	2	...	1	2	...	...	...	...	1	...	1	...	...
Fulton	13	1	12	12	1	...	1	...	2	2	5	...	1
Genesee	7	5	...	2	...	...	...	1	...	...	1	...	...
Greene	1	...	...	1	...	...	...	...	...	...	1	...	...
Hamilton	2	2	...	...	...	...	...	...	...	...	...	...	...
Herkimer	...	...	...	...	...	...	...	...	...	...	...	...	...
Jefferson	3	3	...	...	...	...	...	...	...	...	...	...	...
Lewis	...	...	...	...	...	...	...	...	...	...	...	...	...
Livingston	6	1	...	5	1	...	...	...	1	2	1	...	...
Madison	3	2	...	1	...	...	...	...	...	1	...	...	...
Monroe	76	38	26	34	...	3	...	...	12	16	3	...	...
Montgomery	2	1	1	1	...	1	...	...	...	...	...	...	...
Nassau	34	23	7	10	1	...	...	...	4	3	2	...	...
Niagara	5	1	4	4	...	...	3	...	1	...	...	...	...
Oneida	...	...	...	...	...	...	...	...	...	...	...	...	...
Onondaga	56	21	15	35	2	...	4	2	12	6	7	2	...
Ontario	13	10	3	3	...	...	...	...	2	1	...	...	...
Orange	7	3	...	4	...	1	...	...	...	3	...	...	...
Orleans	6	4	...	2	...	...	...	...	...	...	2	...	...
Oswego	5	3	2	1	...	...	...	...	...	1	...	...	...
Otsego	3	...	2	3	...	...	...	...	2	...	1	...	...
Putnam	2	2	...	...	...	...	...	...	...	...	...	...	...
Rensselaer	1	...	...	1	...	...	...	...	...	1	...	...	...
Rockland	4	2	...	2	...	...	...	...	1	1	...	...	...
St. Lawrence	3	2	1	1	...	...	...	...	1	...	...	...	...
Saratoga	4	2	2	2	...	...	...	1	...	1	...	...	...
Schenectady	19	11	8	8	...	...	...	...	8	...	...	...	...
Schoharie	1	1	...	...	...	...	...	...	...	...	...	...	...
Schuyler	...	...	...	...	...	...	...	...	...	...	...	...	...
Seneca	1	...	...	1	...	...	...	...	1	...	...	...	...
Steuben	21	14	7	6	...	...	...	...	...	3	2	...	1
Suffolk	11	2	8	7	1	...	...	2	1	...	3	...	...
Sullivan	4	3	1	1	...	1	...	...	...	...	...	...	...
Tioga	3	2	1	1	...	...	...	...	...	...	1	...	...
Tompkins	6	...	6	6	...	...	...	...	6	...	...	...	...
Ulster	5	4	1	1	...	...	...	...	1	...	...	...	...
Warren	5	1	...	4	1	...	...	...	...	...	...	...	...
Washington	6	3	2	3	...	...	...	...	1	1	1	...	...
Wayne	8	2	4	6	...	...	...	...	2	...	4	...	...
Westchester	21	...	21	12	...	...	...	1	4	4	2	...	1
Wyoming	7	4	...	3	3	...	...	...	...	...	...	...	...
Yates	3	...	1	3	...	...	...	...	...	...	2	1	...

*Figures in columns 2, 3, and 4 exceed total because some proceedings are included in both columns 3 and 4.
 There were 166 such proceedings statewide.

Table A-15
FAMILY COURT
Child Protective Proceedings Involving Child Abuse (Boys)
Length of Time Between Filing of Petition and Initial Fact-Finding Hearing
January 1, 1982 through December 31, 1982

Region County	Total	0-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 or More Days	Number of Cases Without IFH
Total New York State	699	118	29	28	23	154	141	86	17	1	102
Total New York City	397	12	8	9	8	93	97	69	14	1	86
New York	42	...	4	2	1	25	7	3	...	...	...
Kings	131	3	2	6	2	19	42	29	10	...	18
Queens	62	...	...	...	2	20	10	6	4	...	20
Bronx	150	8	2	1	3	29	32	26	...	1	48
Richmond	12	1	...	...	...	...	6	5	...	...	...
Total Upstate	302	106	21	19	15	61	44	17	3	...	16
Albany	14	2	...	1	...	7	4	...	...	...	...
Allegany	...	...	...	...	...	...	...	...	...	...	...
Broome	3	1	2	...	...	...	...	...	...	...	...
Cattaraugus	4	2	...	...	1	1	...	...	...	...	...
Cayuga	...	...	...	...	...	...	...	...	...	...	...
Chautauqua	...	...	...	...	...	...	...	...	...	...	...
Chemung	6	...	...	...	...	5	1	...	...	...	...
Chenango	5	1	...	2	...	...	1	1	...	...	...
Clinton	3	...	...	...	...	3	...	...	...	...	...
Columbia	8	1	...	...	...	...	7	...	...	...	...
Cortland	...	...	...	...	...	...	...	...	...	...	...
Delaware	2	...	1	...	...	1	...	...	...	...	...
Dutchess	21	13	6	...	2	...	...	...	...	...	...
Erie	42	38	3	...	1	...	...	...	...	...	...
Essex	...	...	...	...	...	...	...	...	...	...	...
Franklin	...	...	...	...	...	...	...	...	...	...	...
Fulton	9	2	...	1	...	2	4	...	...	...	...
Genesee	1	1	...	...	...	...	...	...	...	...	...
Greene	2	1	1	...	...	...	...	...	...	...	...
Hamilton	...	...	...	...	...	...	...	...	...	...	...
Herkimer	...	...	...	...	...	...	...	...	...	...	...
Jefferson	...	...	...	...	...	...	...	...	...	...	...
Lewis	...	...	...	...	...	...	...	...	...	...	...
Livingston	1	...	...	...	...	...	...	...	...	...	...
Madison	2	2	...	...	...	...	...	1	...	...	...
Monroe	33	...	...	...	...	5	6	7	...	...	15
Montgomery	1	1	...	...	...	...	...	...	...	...	...
Nassau	30	13	1	5	2	9	...	...	...	...	...
Niagara	4	1	1	1	1	...	...	...	...	...	...
Oneida	1	1	...	...	...	...	...	...	...	...	...
Onondaga	30	...	...	...	4	13	9	4	...	...	...
Ontario	...	...	...	...	...	...	...	...	...	...	...
Orange	3	...	...	...	...	1	2	...	...	...	...
Orleans	1	...	...	...	...	...	...	...	1	...	...
Oswego	3	2	...	...	...	1	...	...	...	...	...
Otsego	...	...	...	...	...	...	...	...	...	...	...
Putnam	1	...	...	...	...	...	1	...	...	...	...
Rensselaer	3	3	...	...	...	...	...	...	...	...	...
Rockland	...	...	...	...	...	...	...	...	...	...	...
St. Lawrence	4	...	...	2	...	...	2	...	...	...	...
Saratoga	...	...	...	...	...	...	...	...	...	...	...
Schenectady	7	3	1	...	...	3	...	...	...	...	...
Schoharie	...	...	...	...	...	...	...	...	...	...	...
Schuyler	2	2	...	...	...	...	...	...	...	...	...
Seneca	...	...	...	...	...	...	...	...	...	...	...
Steuben	12	...	2	5	2	3	...	...	...	...	...
Suffolk	6	4	...	...	...	...	1	...	1	...	...
Sullivan	3	2	...	1	...	...	...	...	...	...	...
Tioga	1	...	...	...	...	...	...	...	...	...	...
Tompkins	...	...	...	...	...	...	...	...	...	...	1
Ulster	4	...	2	...	...	...	...	...	...	...	...
Warren	...	...	...	...	...	1	...	...	1	...	...
Washington	3	1	...	...	...	...	...	2	...	...	...
Wayne	2	...	...	...	...	...	...	2	...	...	...
Westchester	16	4	...	2	4	6	...	...	...	...	...
Wyoming	6	4	1	1	...	...	...	...	...	...	...
Yates	3	1	...	...	...	2	...	...	...	...	...

Table A-16
FAMILY COURT
Child Protective Proceedings Involving Child Abuse (Girls)
Length of Time Between Filing of Petition and Initial Fact-Finding Hearing
January 1, 1982 through December 31, 1982

Region County	Total	0-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 or More Days	Number of Cases Without IPF
Total New York State	1,031	198	53	35	48	229	227	107	18	2	114
Total New York City	475	20	11	9	11	104	157	61	13	...	89
New York	39	2	2	4	2	27	1	1	...	...	...
Kings	188	5	4	4	5	33	65	21	7	...	44
Queens	94	2	1	...	1	18	34	16	6	...	16
Bronx	142	11	4	1	3	22	51	21	...	...	29
Richmond	12	...	...	...	...	4	6	2	...	...	...
Total Upstate	556	178	42	26	37	125	70	46	5	2	25
Albany	17	2	2	1	1	9	1	1	...	...	...
Allegany	2	...	...	1	...	...	1	...	...	...	...
Broome	8	5	2	...	...	...	1	...	...	...	...
Cattaraugus	6	2	...	1	...	3	...	...	...	...	...
Cayuga	...	...	...	...	...	...	...	...	...	...	...
Chautauqua	1	...	...	...	...	...	...	1	...	...	...
Chemung	10	1	...	1	...	3	4	1	...	...	...
Chenango	8	2	...	2	1	...	1	2	...	...	...
Clinton	7	...	...	...	...	5	1	...	...	...	1
Columbia	8	...	...	...	...	3	5	...	...	...	...
Cortland	1	1	...	...	...	...	...	...	...	...	...
Delaware	19	3	2	1	...	6	2	3	...	...	2
Dutchess	21	17	2	...	2	...	...	...	...	...	...
Erie	69	68	...	...	...	1	...	...	...	...	...
Essex	...	...	...	...	...	...	...	...	...	...	...
Franklin	2	1	...	...	...	1	...	...	...	...	...
Fulton	13	2	1	1	...	3	2	4	...	...	...
Genesee	7	1	1	...	...	5	...	...	...	...	...
Greene	1	1	...	...	...	...	...	...	...	...	...
Hamilton	2	2	...	...	...	...	...	...	...	...	...
Herkimer	...	...	...	...	...	...	...	...	...	...	...
Jefferson	3	2	...	...	...	...	...	1	...	...	...
Lewis	...	...	...	...	...	...	...	...	...	...	...
Livingston	6	3	...	...	...	...	2	1	...	...	...
Madison	3	3	...	...	...	...	...	...	...	...	...
Monroe	76	3	3	1	4	19	14	12	1	2	17
Montgomery	2	2	...	...	...	...	...	...	...	...	...
Nassau	34	9	2	5	12	6	...	...	...	...	...
Niagara	5	5	...	...	...	...	...	...	...	...	...
Oneida	...	...	...	...	...	...	...	...	...	...	...
Onondaga	56	1	2	...	6	23	17	7	...	...	...
Ontario	13	...	1	...	...	7	4	...	1	...	...
Orange	7	2	...	...	...	...	3	2	...	...	...
Orleans	6	...	...	...	...	2	1	...	2	...	1
Oswego	5	2	2	...	...	1	...	...	...	...	...
Otsego	3	1	...	...	...	2	...	...	...	...	...
Putnam	2	...	...	...	...	...	1	1	...	...	...
Rensselaer	1	...	1	...	...	...	...	...	...	...	...
Rockland	4	1	...	...	1	...	...	2	...	...	...
St. Lawrence	3	...	...	2	...	1	...	...	...	...	...
Saratoga	4	2	...	1	...	...	1	...	...	...	...
Schenectady	19	2	4	...	1	11	...	...	...	...	1
Schoharie	1	...	...	...	...	...	1	...	...	...	...
Schuyler	...	...	...	...	...	...	...	...	...	...	...
Seneca	1	...	...	...	...	1	...	...	...	...	...
Steuben	21	1	2	8	5	5	...	...	...	...	...
Suffolk	11	7	...	...	...	2	1	...	1	...	...
Sullivan	4	4	...	...	...	...	...	...	...	...	...
Tioga	3	1	1	...	...	1	...	...	...	...	...
Tompkins	6	...	6	...	...	...	...	...	...	...	...
Ulster	5	1	2	...	...	2	...	...	...	...	...
Warren	5	2	3	...	...	...	...	...	...	...	...
Washington	6	1	1	...	...	...	1	3	...	...	...
Wayne	8	...	...	...	1	...	1	5	...	...	...
Westchester	21	8	2	...	3	3	2	...	...	...	3
Wyoming	7	6	...	1	...	...	...	...	...	...	...
Yates	3	1	...	...	...	...	2	...	...	...	...

Table A-17
FAMILY COURT
Child Protective Proceedings Involving Child Abuse (Boys)
Number of Adjournments Between Filing of Petition and Initial Fact-Finding Hearing*
January 1, 1982 through December 31, 1982

Region County	Number of Adjournments											
	Total	None	1	2	3	4	5	6	7	8	9	Over 9
Total New York State	556	84	95	61	61	61	41	26	21	23	30	53
Total New York City	300	24	14	29	42	40	24	15	16	23	27	46
New York	42	1	3	4	12	8	1	1	4	3	2	3
Kings	111	18	5	9	16	10	19	6	2	6	8	12
Queens	33	4	2	...	7	6	1	2	4	2	1	4
Bronx	102	...	4	13	7	15	3	6	6	10	13	25
Richmond	12	1	...	3	...	1	...	...	...	2	3	2
Total Upstate	256	60	81	32	19	21	17	11	5	...	3	7
Albany	14	...	3	2	5	4	...	...	...	...	...	...
Allegany	...	...	...	...	...	...	...	...	...	...	...	...
Broome	2	1	1	...	...	...	...	...	...	...	...	...
Cattaraugus	4	2	2	...	...	...	...	...	...	...	...	...
Cayuga	...	...	...	...	...	...	...	...	...	...	...	...
Chautauqua	...	...	...	...	...	...	...	...	...	...	...	...
Chemung	6	...	...	5	...	1	...	...	...	...	...	...
Chenango	5	2	2	1	...	...	...	...	...	...	...	...
Clinton	2	2	...	...	...	...	...	...	...	...	...	...
Columbia	8	2	5	1	...	...	...	...	...	...	...	...
Cortland	...	...	...	...	...	...	...	...	...	...	...	...
Delaware	1	1	...	...	...	...	...	...	...	...	...	...
Dutchess	19	...	17	...	2	...	...	...	...	...	...	...
Eric	32	31	...	...	...	...	...	1	...	...	...	...
Essex	...	...	...	...	...	...	...	...	...	...	...	...
Franklin	...	...	...	...	...	...	...	...	...	...	...	...
Fulton	8	1	4	1	2	...	...	...	...	...	...	...
Genesee	1	1	...	...	...	...	...	...	...	...	...	...
Greene	1	...	...	1	...	...	...	...	...	...	...	...
Hamilton	...	...	...	...	...	...	...	...	...	...	...	...
Herkimer	...	...	...	...	...	...	...	...	...	...	...	...
Jefferson	...	...	...	...	...	...	...	...	...	...	...	...
Lewis	...	...	...	...	...	...	...	...	...	...	...	...
Livingston	1	...	...	1	...	...	...	...	...	...	...	...
Madison	...	...	...	...	...	...	...	...	...	...	...	...
Monroe	18	...	...	...	1	6	4	3	2	...	1	1
Montgomery	1	...	...	...	...	...	1	...	...	...	...	...
Nassau	29	4	10	5	...	...	5	3	...	...	1	1
Niagara	3	3	...	...	...	...	...	...	...	...	...	...
Oneida	1	...	...	...	1	...	...	...	...	...	...	...
Onondaga	30	1	...	4	4	4	5	4	3	...	1	4
Ontario	...	...	...	...	...	...	...	...	...	...	...	...
Orange	3	...	...	3	...	...	...	...	...	...	...	...
Orleans	1	...	...	...	...	...	1	...	...	...	...	...
Oswego	3	...	1	2	...	...	...	...	...	...	...	...
Otsego	...	...	...	...	...	...	...	...	...	...	...	...
Putnam	1	...	...	1	...	...	...	...	...	...	...	...
Rensselaer	3	2	...	...	1	...	...	...	...	...	...	...
Rockland	...	...	...	...	...	...	...	...	...	...	...	...
St. Lawrence	4	...	3	...	1	...	...	...	...	...	...	...
Saratoga	...	...	...	...	...	...	...	...	...	...	...	...
Schenectady	7	...	5	2	...	...	...	...	...	...	...	...
Schoharie	...	...	...	...	...	...	...	...	...	...	...	...
Schuyler	1	1	...	...	...	...	...	...	...	...	...	...
Seneca	...	...	...	...	...	...	...	...	...	...	...	...
Steuben	8	...	8	...	...	...	...	...	...	...	...	...
Suffolk	6	1	3	...	...	1	...	...	...	...	...	...
Sullivan	3	...	2	...	1	...	...	...	...	...	...	1
Tioga	...	...	...	...	...	...	...	...	...	...	...	...
Tompkins	...	...	...	...	...	...	...	...	...	...	...	...
Ulster	3	3	...	...	...	...	...	...	...	...	...	...
Warren	...	...	...	...	...	...	...	...	...	...	...	...
Washington	3	...	1	...	1	...	1	...	...	...	...	...
Wayne	2	...	2	...	...	...	...	...	...	...	...	...
Westchester	13	1	6	1	...	5	...	...	...	...	...	...
Wyoming	6	1	5	...	...	...	...	...	...	...	...	...
Yates	3	...	1	2	...	...	...	...	...	...	...	...

*This table includes only cases in which there was an initial fact-finding hearing.

Table A-18
FAMILY COURT
Child Protective Proceedings Involving Child Abuse (Girls)
Number Of Adjournments Between Filing Of Petition and Initial Fact-Finding Hearing*
January 1, 1982 through December 31, 1982

Region County	Number of Adjournments											
	Total	None	1	2	3	4	5	6	7	8	9	Over 9
Total New York State	857	167	149	103	106	65	73	46	41	25	22	60
Total New York City	378	31	20	38	60	40	40	35	26	24	17	47
New York	39	1	5	3	11	4	4	4	...	...	1	6
Kings	142	14	3	16	28	14	27	16	7	2	...	15
Queens	73	16	2	2	11	7	...	5	6	14	4	6
Bronx	112	...	7	15	9	13	8	10	13	7	11	19
Richmond	12	...	3	2	1	2	1	...	...	1	1	1
Total Upstate	479	136	129	65	46	25	33	11	15	1	5	13
Albany	17	...	9	4	2	1	...	1	...	...	...	...
Allegany	2	...	1	1	...	...	...	...	...	...	...	...
Broome	7	5	1	1	...	...	...	...	...	...	...	...
Cattaraugus	6	1	5	...	...	...	...	...	...	...	...	...
Cayuga	...	...	...	...	...	...	...	...	...	...	...	...
Chautauque	1	...	1	...	...	...	...	...	...	...	...	...
Chemung	10	1	2	...	2	...	...	...	...	...	...	...
Chenango	8	3	3	2	...	4	...	...	...	...	...	...
Clinton	6	5	1	...	...	...	...	...	...	...	...	...
Columbia	8	4	2	...	1	...	...	...	...	...	...	...
Cortland	1	1	...	...	...	...	...	...	...	...	...	...
Delaware	15	15	...	...	...	...	...	...	...	...	...	...
Dutchess	21	3	14	...	...	...	4	...	...	...	...	...
Erie	46	46	...	...	...	...	...	...	...	...	...	...
Essex	...	...	...	...	...	...	...	...	...	...	...	...
Franklin	2	1	...	1	...	...	...	...	...	...	...	...
Fulton	11	1	4	...	5	...	...	1	...	...	...	...
Genesee	7	...	3	2	...	...	2	...	...	...	...	...
Greene	1	1	...	...	...	...	...	...	...	...	...	...
Hamilton	2	...	...	...	2	...	...	...	...	...	...	...
Herkimer	...	...	...	...	...	...	...	...	...	...	...	...
Jefferson	3	2	...	1	...	...	...	...	...	...	...	...
Lewis	...	...	...	...	...	...	...	...	...	...	...	...
Livingston	5	1	4	1	...	...	...	...	...	...	...	...
Madison	1	...	1	...	...	...	...	...	...	...	...	...
Monroe	59	3	6	7	14	5	7	2	7	1	4	3
Montgomery	2	...	...	...	...	...	2	...	...	...	...	...
Nassau	31	8	4	9	3	1	4	...	2	...	...	...
Niagara	3	3	...	...	...	...	...	...	...	...	...	...
Oneida	...	...	...	...	...	...	...	...	...	...	...	...
Onondaga	56	1	3	6	9	7	7	7	5	...	1	10
Ontario	10	1	2	4	1	2	...	...	...	...	...	...
Orange	5	1	1	3	...	...	...	...	...	...	...	...
Orleans	5	3	...	...	...	...	2	...	...	...	...	...
Oswego	5	2	2	1	...	...	...	...	...	...	...	...
Otsego	3	...	3	...	...	...	...	...	...	...	...	...
Putnam	2	...	...	2	...	...	...	...	...	...	...	...
Rensselaer	1	...	1	...	...	...	...	...	...	...	...	...
Rockland	4	...	1	1	2	...	...	...	...	...	...	...
St. Lawrence	3	...	3	...	...	...	...	...	...	...	...	...
Saratoga	4	...	3	...	...	...	1	...	...	...	...	...
Schenectady	18	1	8	6	...	3	...	...	...	...	...	...
Schoharie	1	...	1	...	...	...	...	...	...	...	...	...
Schuyler	...	...	...	...	...	...	...	...	...	...	...	...
Seneca	1	...	...	1	...	...	...	...	...	...	...	...
Steuben	14	1	12	1	...	...	...	...	...	...	...	...
Suffolk	10	5	...	2	2	...	1	...	...	...	...	...
Sullivan	4	2	1	...	...	...	...	...	1	...	...	...
Tioga	3	...	2	1	...	...	...	...	...	...	...	...
Tompkins	6	2	4	...	...	...	...	...	...	...	...	...
Ulster	4	4	...	...	...	...	...	...	...	...	...	...
Warren	4	2	2	...	...	...	...	...	...	...	...	...
Washington	6	...	3	1	...	...	2	...	...	...	...	...
Wayne	8	...	4	2	1	...	1	...	...	...	...	...
Westchester	16	5	7	2	2	...	...	...	...	...	...	...
Wyoming	7	2	5	...	...	...	...	...	...	...	...	...
Yates	3	...	1	...	...	2	...	...	...	...	...	...

* This table includes only cases in which there was an initial fact-finding hearing.

Table A-19
FAMILY COURT
Child Protective Proceedings Involving Child Abuse (Boys)
Length of Time Between Initial Fact-Finding Hearing and Dispositional Hearing
January 1, 1982 through December 31, 1982

Region County	Total	0-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 or More Days	Number of Cases Without IFH
Total New York State	699	139	16	8	14	150	130	107	32	1	102
Total New York City	397	72	2	...	...	94	89	45	8	1	86
New York	42	6	...	...	...	17	11	6	1	1	...
Kings	131	34	2	...	...	16	42	19	...	...	18
Queens	62	21	...	...	...	9	6	4	2	...	20
Bronx	150	10	...	...	...	46	29	12	5	...	48
Richmond	12	1	...	...	...	6	1	4	...	...	...
Total Upstate	302	67	14	8	14	56	41	62	24	...	16
Albany	14	...	1	3	...	2	1	3	4	...	...
Allegany	...	...	...	...	...	...	...	...	...	...	...
Broome	3	...	...	...	...	3	...	...	...	...	...
Cattaraugus	4	2	...	...	...	...	...	...	2	...	...
Cayuga	...	...	...	...	...	...	...	...	...	...	...
Chautauqua	...	...	...	...	...	...	...	...	...	...	...
Chemung	6	6	...	...	...	...	...	...	...	...	...
Chenango	5	3	...	...	...	...	...	...	...	...	...
Clinton	3	2	...	...	...	...	2	...	...	...	...
Columbia	8	8	...	...	...	...	...	1	...	...	...
Cortland	...	...	...	...	...	...	...	...	...	...	...
Delaware	2	2	...	...	...	...	...	...	...	...	...
Dutchess	21	...	...	...	...	4	11	6	...	...	...
Erie	42	3	6	2	1	9	1	17	3	...	...
Essex	...	...	...	...	...	...	...	...	...	...	...
Franklin	...	...	...	...	...	...	...	...	...	...	...
Fulton	9	2	...	...	...	1	...	3	3	...	...
Genesee	1	...	...	...	1	...	...	...	...	...	...
Greene	2	...	...	1	...	...	...	1	...	...	...
Hamilton	...	...	...	...	...	...	...	...	...	...	...
Herkimer	...	...	...	...	...	...	...	...	...	...	...
Jefferson	...	...	...	...	...	...	...	...	...	...	...
Lewis	...	...	...	...	...	...	...	...	...	...	...
Livingston	1	1	...	...	...	...	...	...	...	...	...
Madison	2	...	...	...	...	...	2	...	...	...	...
Monroe	33	6	3	1	1	3	...	...	4	...	15
Montgomery	1	...	...	...	...	...	...	...	1	...	...
Nassau	30	1	...	...	...	11	9	8	1	...	...
Niagara	4	1	...	1	...	...	...	1	1	...	...
Oneida	1	...	...	...	...	...	1	...	...	...	...
Onondaga	30	12	...	...	1	7	4	6	...	...	...
Ontario	...	...	...	...	...	...	...	...	...	...	...
Orange	3	...	...	...	...	1	2	...	...	...	...
Orleans	1	...	...	...	...	...	...	1	...	...	...
Oswego	3	...	...	...	...	2	1	...	...	...	...
Otsego	...	...	...	...	...	...	...	...	...	...	...
Putnam	1	...	...	...	...	1	...	...	...	...	...
Rensselaer	3	...	...	...	...	2	...	...	1	...	...
Rockland	...	...	...	...	...	...	...	...	...	...	...
St. Lawrence	4	3	...	...	...	1	...	...	...	...	...
Saratoga	...	...	...	...	...	...	...	...	...	...	...
Schenectady	7	3	...	...	4	...	...	...	...	...	...
Schoharie	...	...	...	...	...	...	...	...	...	...	...
Schuyler	2	...	...	...	...	...	...	...	...	...	...
Seneca	...	...	...	...	1	1	...	...	...	...	...
Steuben	...	...	...	...	...	...	...	...	...	...	...
Suffolk	12	4	...	...	...	3	...	5	...	...	...
Sullivan	6	4	...	...	...	...	...	...	2	...	...
Tioga	3	...	...	...	1	...	1	1	...	...	...
Tompkins	1	...	...	...	...	...	...	...	...	...	1
Ulster	4	...	...	...	...	2	1	...	...	...	...
Warren	...	...	...	...	...	...	...	1	...	...	...
Washington	3	1	1	...	...	...	...	1	...	...	...
Wayne	2	...	...	...	...	...	...	2	...	...	...
Westchester	16	3	3	...	4	...	2	5	2	...	...
Wyoming	6	3	...	...	...	3	...	...	...	...	...
Yates	3	...	...	...	...	...	3	...	...	...	...

Table A-20
FAMILY COURT
Child Protective Proceedings Involving Child Abuse (Girls)
Length of Time Between Initial Fact-Finding Hearing and Dispositional Hearing
January 1, 1982 through December 31, 1982

Region County	Total	0-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-730 Days	731 or More Days	Number of Cases Without IFH
Total New York State	1,031	267	16	20	25	232	164	135	51	7	114
Total New York City	475	95	2	2	4	134	98	41	8	2	89
New York	39	7	...	...	1	17	9	5	...	...	...
Kings	188	37	2	...	2	31	54	16	...	2	44
Queens	94	40	...	2	1	18	7	6	4	...	16
Bronx	142	11	...	...	...	64	23	11	4	...	29
Richmond	12	...	...	...	...	4	5	3	...	...	...
Total Upstate	556	172	14	18	21	98	66	94	43	5	25
Albany	17	3	1	1	2	5	3	...	2	...	...
Allegany	2	1	...	...	...	...	1	...	...	...	...
Broome	8	1	...	1	...	6	...	...	...	...	...
Cattaraugus	6	...	...	...	...	1	...	1	4	...	...
Cayuga	...	...	...	...	...	...	...	...	...	...	...
Chautauqua	1	...	...	...	...	...	1	...	...	...	...
Chemung	10	6	...	...	...	3	1	...	...	...	...
Chenango	8	3	...	...	...	1	3	1	...	...	...
Clinton	7	2	...	...	...	...	...	4	...	...	1
Columbia	8	7	...	...	...	...	1	...	...	...	...
Cortland	1	...	...	...	...	...	1	...	...	...	...
Delaware	19	14	...	...	...	3	...	...	...	...	2
Dutchess	21	...	...	...	...	2	7	10	2	...	...
Erie	69	8	5	3	8	16	5	20	3	1	...
Essex	...	...	...	...	...	...	...	...	...	...	...
Franklin	2	...	...	...	...	...	...	2	...	...	...
Fulton	13	6	...	...	...	1	...	3	3	...	...
Genesee	7	3	...	1	...	1	...	1	...	1	...
Greene	1	...	...	...	...	...	...	1	...	...	...
Hamilton	2	...	...	...	...	...	2	...	...	...	...
Herkimer	...	...	...	...	...	...	...	...	...	...	...
Jefferson	3	...	...	...	1	1	1	...	...	...	...
Lewis	...	...	...	...	...	...	...	...	...	...	...
Livingston	6	4	...	...	...	1	...	1	...	...	...
Madison	3	...	...	...	1	...	2	...	...	...	...
Monroe	76	22	5	4	2	14	4	...	8	...	17
Montgomery	2	...	...	...	...	...	1	...	1	...	...
Nassau	34	3	...	...	...	8	15	5	3	...	...
Niagara	5	...	...	3	...	1	1	...	...	...	...
Oneida	...	...	...	...	...	...	...	...	...	...	...
Onondaga	56	36	...	1	...	8	3	8	...	...	...
Ontario	13	10	1	...	...	...	...	2	...	...	...
Orange	7	...	...	...	...	1	3	3	...	...	...
Orleans	6	3	...	...	...	...	...	2	...	...	1
Oswego	5	1	...	...	...	2	...	1	1	...	...
Otsego	3	2	...	...	...	...	...	1	...	...	...
Putnam	2	...	...	...	...	2	...	...	...	...	...
Rensselaer	1	...	...	...	...	...	1	...	...	...	...
Rockland	4	...	...	...	...	3	1	...	...	...	...
St. Lawrence	3	1	...	...	...	2	...	...	...	...	...
Saratoga	4	1	...	...	...	1	...	1	1	...	...
Schenectady	19	12	...	1	3	2	...	...	...	...	1
Schoharie	1	1	...	...	...	...	...	...	...	...	...
Schuyler	...	...	...	...	...	...	...	...	...	...	...
Seneca	1	1	...	...	...	...	...	...	...	...	...
Steuben	21	7	1	...	...	2	3	7	...	1	...
Suffolk	11	2	...	1	2	...	1	2	3	...	...
Sullivan	4	...	1	...	...	...	1	1	1	...	...
Tioga	3	1	...	...	...	...	...	2	...	...	...
Tompkins	6	...	...	...	2	4	...	...	...	...	...
Ulster	5	1	...	...	...	2	1	...	...	1	...
Warren	5	...	...	...	...	1	...	1	3	...	...
Washington	6	2	...	1	...	1	...	2	...	...	...
Wayne	8	1	...	...	...	...	...	5	2	...	...
Westchester	21	2	...	...	...	2	3	5	5	1	3
Wyoming	7	5	...	1	...	1	...	...	...	...	...
Yates	3	...	...	...	...	...	...	2	1	...	...

Table A-21
FAMILY COURT
Child Protective Proceedings Involving Child Abuse (Boys)
Number of Adjournments Between Initial Fact-Finding Hearing and Dispositional Hearing
January 1, 1982 through December 31, 1982

Region County	Number of Adjournments											
	Total	None	1	2	3	4	5	6	7	8	9	Over 9
Total New York State	552	102	153	92	63	60	20	15	10	10	6	21
Total New York City	302	46	67	47	48	34	11	13	7	6	6	17
New York	38	5	12	7	4	4	1	...	...	...	...	5
Kings	110	24	22	12	20	16	3	4	1	...	6	2
Queens	41	8	5	4	4	6	4	5	2	2	...	1
Bronx	101	8	24	23	17	5	3	4	4	4	...	9
Richmond	12	1	4	1	3	3	...	...	...	...	...	...
Total Upstate	250	56	86	45	15	26	9	2	3	4	...	4
Albany	14	...	7	3	...	2	2	...	...	...	...	...
Allegany	...	...	...	...	...	...	...	...	...	...	...	...
Broome	3	2	1	...	...	...	...	...	...	...	...	...
Cattaraugus	4	4	...	...	...	...	...	...	...	...	...	...
Cayuga	...	...	...	...	...	...	...	...	...	...	...	...
Chautauqua	...	...	...	...	...	...	...	...	...	...	...	...
Chemung	5	5	...	...	...	...	...	...	...	...	...	...
Chenango	4	3	...	1	...	...	...	...	...	...	...	...
Clinton	2	2	...	...	...	...	...	...	...	...	...	...
Columbia	8	2	5	1	...	...	...	...	...	...	...	...
Cortland	...	...	...	...	...	...	...	...	...	...	...	...
Delaware	1	1	...	...	...	...	...	...	...	...	...	...
Dutchess	19	...	...	4	1	4	1	2	2	4	...	1
Erie	41	2	6	14	6	7	5	...	...	...	...	1
Essex	...	...	...	...	...	...	...	...	...	...	...	...
Franklin	...	...	...	...	...	...	...	...	...	...	...	...
Fulton	8	1	5	1	1	...	...	...	...	...	...	...
Genesee	1	...	1	...	...	...	...	...	...	...	...	...
Greene	1	...	...	1	...	...	...	...	...	...	...	...
Hamilton	...	...	...	...	...	...	...	...	...	...	...	...
Herkimer	...	...	...	...	...	...	...	...	...	...	...	...
Jefferson	...	...	...	...	...	...	...	...	...	...	...	...
Lewis	...	...	...	...	...	...	...	...	...	...	...	...
Livingston	...	...	...	...	...	...	...	...	...	...	...	...
Madison	2	...	...	2	...	...	...	...	...	...	...	...
Monroe	16	5	10	1	...	...	...	...	...	...	...	...
Montgomery	1	1	...	...	...	...	...	...	...	...	...	...
Nassau	29	2	14	5	2	5	...	...	1	...	...	...
Niagara	3	3	...	...	...	...	...	...	...	...	...	...
Oneida	1	1	...	...	...	...	...	...	...	...	...	...
Onondaga	23	8	5	6	1	3	...	...	...	...	...	...
Ontario	...	...	...	...	...	...	...	...	...	...	...	...
Orange	3	1	2	...	...	...	...	...	...	...	...	...
Orleans	1	...	...	...	1	...	...	...	...	...	...	...
Oswego	1	...	...	...	...	1	...	...	...	...	...	...
Otsego	...	...	...	...	...	...	...	...	...	...	...	...
Putnam	1	1	...	...	...	...	...	...	...	...	...	...
Rensselaer	3	...	2	1	...	...	...	...	...	...	...	...
Rockland	...	...	...	...	...	...	...	...	...	...	...	...
St. Lawrence	4	3	1	...	...	...	...	...	...	...	...	...
Saratoga	...	...	...	...	...	...	...	...	...	...	...	...
Schenectady	1	1	...	...	...	...	...	...	...	...	...	...
Schoharie	...	...	...	...	...	...	...	...	...	...	...	...
Schuyler	1	1	...	...	...	...	...	...	...	...	...	...
Seneca	...	...	...	...	...	...	...	...	...	...	...	...
Steuben	10	...	8	2	...	...	...	...	...	...	...	...
Suffolk	6	...	3	1	...	...	...	...	...	...	...	...
Sullivan	2	1	1	...	...	1	...	...	...	...	...	1
Tioga	...	...	...	...	...	...	...	...	...	...	...	...
Tompkins	...	...	...	...	...	...	...	...	...	...	...	...
Ulster	4	3	1	...	...	...	...	...	...	...	...	...
Warren	...	...	...	...	...	...	...	...	...	...	...	...
Washington	2	...	2	...	...	...	...	...	...	...	...	...
Wayne	2	...	...	...	2	...	...	...	...	...	...	...
Westchester	16	1	7	2	1	3	1	...	...	...	...	1
Wyoming	5	2	3	...	...	...	...	...	...	...	...	...
Yates	2	...	2	...	...	...	...	...	...	...	...	...

* This table includes only cases in which there was an initial fact-finding hearing.

Table A-22
FAMILY COURT
Child Protective Proceeding Involving Child Abuse (Girls)
Number of Adjournments Between Initial Fact-Finding Hearing and Dispositional Hearing
January 1, 1982 through December 31, 1982

Region County	Number of Adjournments											
	Total	None	1	2	3	4	4	6	7	8	9	Over 9
Total New York State	819	199	221	146	98	54	32	28	6	8	10	17
Total New York City	369	64	85	65	58	32	16	18	4	5	6	16
New York	35	4	7	8	3	5	1	...	...	...	2	5
Kings	138	25	35	17	30	16	6	6	...	...	2	1
Queens	73	27	11	2	6	3	6	8	3	2	1	4
Bronx	111	8	30	36	14	6	2	4	1	3	1	6
Richmond	12	...	2	2	5	2	1	...	...	...	...	...
Total Upstate	450	135	136	81	40	22	16	10	2	3	4	1
Albany	16	...	3	8	2	...	2	...	...	1	...	...
Allegany	2	2	...	...	...	...	...	...	...	...	...	...
Broome	8	6	2	...	...	...	...	...	...	...	...	...
Cattaraugus	6	2	2	1	1	...	...	...	...	...	...	...
Cayuga	...	...	...	...	...	...	...	...	...	...	...	...
Chautauqua	1	1	...	...	...	...	...	...	...	...	...	...
Chemung	9	8	...	1	...	...	...	...	...	...	...	...
Chenango	5	2	2	1	...	...	...	...	...	...	...	...
Clinton	6	6	...	...	...	...	...	...	...	...	...	...
Columbia	8	1	4	2	1	...	...	...	...	...	...	...
Cortland	1	...	...	...	...	1	...	...	...	...	...	...
Delaware	15	15	...	...	...	...	...	...	...	...	...	...
Dutchess	19	...	...	5	3	8	2	1	...	...	...	...
Erie	67	3	12	15	14	8	7	7	...	...	1	...
Essex	...	...	...	...	...	...	...	...	...	...	...	...
Franklin	2	1	...	1	...	...	...	...	...	...	...	...
Fulton	12	4	5	2	1	...	...	...	...	...	...	...
Genesee	6	3	2	...	1	...	...	...	...	...	...	...
Greene	1	...	...	...	...	...	1	...	...	...	...	...
Hamilton	...	...	...	...	...	...	...	...	...	...	...	...
Herkimer	...	...	...	...	...	...	...	...	...	...	...	...
Jefferson	2	...	...	2	...	...	...	...	...	...	...	...
Lewis	...	...	...	...	...	...	...	...	...	...	...	...
Livingston	5	3	1	...	...	...	1	...	...	...	...	...
Madison	2	1	...	1	...	...	...	...	...	...	...	...
Monroe	50	16	21	12	...	...	...	...	...	...	...	...
Montgomery	2	2	...	...	...	...	...	...	...	...	...	...
Nassau	30	4	10	8	4	3	...	1	...	...	...	...
Niagara	4	3	1	...	...	...	...	...	...	...	...	...
Oneida	...	...	...	...	...	...	...	...	...	...	...	...
Onondaga	36	21	8	3	3	1	...	...	...	...	...	...
Ontario	12	7	...	4	1	...	...	...	...	...	...	...
Orange	7	...	5	2	...	...	...	...	...	...	...	...
Orleans	5	1	2	...	2	...	...	...	...	...	...	...
Oswego	5	1	2	1	1	...	...	...	...	...	...	...
Otsego	...	...	...	...	...	...	...	...	...	...	...	...
Putnam	2	2	...	...	...	...	...	...	...	...	...	...
Rensselaer	1	...	...	1	...	...	...	...	...	...	...	...
Rockland	4	...	3	1	...	...	...	...	...	...	...	...
St. Lawrence	3	1	2	...	...	...	...	...	...	...	...	...
Saratoga	3	1	2	...	...	...	...	...	...	...	...	...
Schenectady	5	1	2	2	...	...	...	...	...	...	...	...
Schoharie	...	...	...	...	...	...	...	...	...	...	...	...
Schuyler	...	...	...	...	...	...	...	...	...	...	...	...
Seneca	...	...	...	...	...	...	...	...	...	...	...	...
Steuben	17	2	12	2	...	...	...	...	...	...	...	1
Suffolk	11	1	1	...	2	1	1	1	...	2	2	...
Sullivan	2	...	2	...	...	...	...	...	...	...	...	...
Tioga	3	1	1	1	...	...	...	...	...	...	...	...
Tompkins	6	2	4	...	...	...	...	...	...	...	...	...
Ulster	5	4	1	...	...	...	...	...	...	...	...	...
Warren	5	1	4	...	...	...	...	...	...	...	...	...
Washington	4	...	4	...	...	...	...	...	...	...	...	...
Wayne	7	...	1	...	4	...	...	...	2	...	...	...
Westchester	18	1	11	4	...	...	1	...	...	...	1	...
Wyoming	7	5	2	...	...	...	...	...	...	...	...	...
Yates	3	...	2	1	...	...	...	...	...	...	...	...

* This table includes only cases in which there was an initial fact-finding hearing.

Table A-23
FAMILY COURT
Court Findings in Child Protective Proceedings Involving Child Abuse (Boys)
Reason for Petition Abuse Only
January 1, 1982 through December 31, 1982

Region County	Total	Court Findings at Dispositional Hearing				Court Findings Based on	
		Child Is Abused	Child Is Neglected	Both	Neither	Establi- ment of Facts Suffi- cient to Sustain Petition	Consent of All Parties
Total New York State	545	158	178	23	186	270	275
Total New York City	302	90	95	20	97	169	133
New York	32	15	9	...	8	21	11
Kings	56	27	16	2	11	38	18
Queens	58	16	13	2	27	12	46
Bronx	148	27	55	16	50	92	56
Richmond	8	5	2	...	1	6	2
Total Upstate	243	68	83	3	89	101	142
Albany	14	14	...	...	...	14	...
Allegany	...	...	...	...	...	...	...
Broome	3	1	...	...	2	1	2
Cattaraugus	4	2	...	...	2	2	2
Cayuga	...	...	...	...	...	...	...
Chautauqua	...	...	...	...	...	...	...
Chemung	6	...	5	...	1	...	6
Chenango	3	1	...	...	2	1	2
Clinton	2	...	1	...	1	2	...
Columbia	8	...	5	...	3	...	8
Cortland	...	...	...	...	...	...	...
Delaware	2	2	...	...	...	1	1
Dutchess	21	3	3	...	15	7	14
Erie	40	1	22	...	17	10	30
Essex	...	...	...	...	...	...	...
Franklin	...	...	...	...	...	...	...
Fulton	1	...	...	...	1	...	1
Genesee	1	...	...	...	1	...	1
Greene	2	1	...	...	1	...	2
Hamilton	...	...	...	...	...	...	...
Herkimer	...	...	...	...	...	...	...
Jefferson	...	...	...	...	...	...	...
Lewis	...	...	...	...	...	...	...
Livingston	1	1	...	...	...	...	1
Madison	2	2	...	...	...	2	...
Monroe	29	7	9	...	13	16	13
Montgomery	1	...	1	...	...	1	...
Nassau	3	...	3	...	...	3	...
Niagara	3	1	...	...	2	1	2
Oneida	1	...	...	...	1	...	1
Onondaga	28	6	15	...	7	20	8
Ontario	...	...	...	...	...	...	...
Orange	3	...	...	3	...	2	1
Orleans	1	...	1	...	...	1	...
Oswego	...	...	...	...	...	...	...
Otsego	...	...	...	...	...	...	...
Putnam	1	1	...	...	...	...	1
Rensselaer	3	1	...	...	2	...	3
Rockland	...	...	...	...	...	...	...
St. Lawrence	4	3	...	...	1	3	1
Saratoga	...	...	...	...	...	...	...
Schenectady	7	1	3	...	3	1	6
Schoharie	...	...	...	...	...	...	...
Schuyler	2	1	1	...	...	1	1
Seneca	...	...	...	...	...	...	...
Steuben	8	5	2	...	2	2	7
Suffolk	6	5	...	...	1	3	3
Sullivan	3	...	...	...	3	...	3
Tioga	...	...	...	...	...	...	...
Tompkins	...	...	...	...	...	...	...
Ulster	2	1	...	...	1	1	1
Warren	...	...	...	...	...	...	...
Washington	3	2	...	...	1	3	...
Wayne	2	2	...	...	...	2	...
Westchester	15	2	10	...	3	2	13
Wyoming	6	1	2	...	3	2	4
Yates	1	1	...	...	...	1	...

Table A-24
FAMILY COURT
Court Findings in Child Protective Proceedings Involving Child Abuse (Girls)
Reason for Petition Abuse Only
January 1, 1982 through December 31, 1982

Region County	Total	Court Findings at Dispositional Hearing				Court Findings Based on	
		Child Is Abused	Child Is Neglected	Both	Neither	Establish- ment of Facts Suffi- cient to Sustain Petition	Consent of All Parties
Total New York State	848	309	248	36	255	414	434
Total New York City	361	122	108	27	104	210	151
New York	25	10	7	...	8	17	8
Kings	101	41	31	6	23	59	42
Queens	83	25	12	2	44	23	60
Bronx	142	39	55	19	29	107	35
Richmond	10	7	3	...	...	4	6
Total Upstate	487	187	140	9	151	204	283
Albany	15	15	...	...	...	15	...
Allegany	2	1	...	...	1	1	1
Broome	8	1	...	...	7	2	6
Cattaraugus	6	...	1	...	5	2	4
Cayuga	...	...	...	...	...	...	...
Chautauqua	1	...	1	...	...	...	1
Chemung	10	3	5	...	2	...	10
Chenango	8	3	1	1	3	1	7
Clinton	7	2	1	...	4	6	1
Columbia	8	1	1	...	6	1	7
Cortland	...	...	...	...	...	...	...
Delaware	18	9	2	...	7	5	13
Dutchess	21	2	10	...	9	7	14
Erie	69	12	40	...	17	10	59
Essex	...	...	...	...	...	...	...
Franklin	1	...	...	...	1	...	1
Fulton	2	...	2	...	...	...	2
Genesee	7	4	...	...	3	...	7
Greene	1	...	...	...	1	...	1
Hamilton	2	2	...	...	...	2	...
Herkimer	...	...	...	...	...	...	...
Jefferson	3	...	...	...	3	...	3
Lewis	...	...	...	...	...	...	...
Livingston	6	5	1	...	...	...	6
Madison	3	2	...	...	1	2	1
Monroe	66	40	12	...	14	47	19
Montgomery	2	...	1	...	1	...	2
Nassau	4	...	3	...	1	1	3
Niagara	5	4	...	...	1	4	1
Oneida	...	...	...	...	...	...	...
Onondaga	55	21	23	1	10	45	10
Ontario	12	6	...	...	6	3	9
Orange	7	1	1	3	2	5	2
Orleans	4	...	2	...	2	2	2
Oswego	5	3	...	...	2	1	4
Otsego	3	2	1	...	...	1	2
Putnam	2	2	...	...	...	...	2
Rensselaer	1	1	...	...	...	...	1
Rockland	4	4	...	...	...	...	4
St. Lawrence	3	3	...	...	...	2	1
Saratoga	4	2	...	...	2	1	3
Schenectady	19	1	11	4	3	5	14
Schoharie	1	...	...	...	1	...	1
Schuyler	...	...	...	...	...	...	...
Seneca	1	1	...	...	...	...	1
Steuben	17	4	4	...	9	4	13
Suffolk	11	3	3	...	5	4	7
Sullivan	4	...	...	...	4	...	4
Tioga	3	2	...	...	1	2	1
Tompkins	6	4	...	...	2	4	2
Ulster	2	...	...	...	2	1	1
Warren	5	2	...	...	3	...	5
Washington	6	4	...	...	2	5	1
Wayne	8	7	1	...	...	7	1
Westchester	19	1	13	...	5	2	17
Wyoming	7	4	...	...	3	1	6
Yates	3	3	...	...	...	3	...

Table A-25
FAMILY COURT
Court findings in Child Protective Proceedings Involving Child Abuse
Reason For Petition Both Abuse and Neglect (Boys)
January 1, 1982 through December 31, 1982

Region County	Total	Court Findings at Dispositional Hearing				Court Findings Based on	
		Child Is Abused	Child Is Neglected	Both	Neither	Establish- ment of Facts Suffi- cient to Sustain Petition	Consent of All Parties
Total New York State	135	10	94	8	23	74	61
Total New York City	88	6	61	7	12	47	39
New York	7	...	5	...	2	6	1
Kings	71	4	51	7	9	37	34
Queens	4	2	2	...	...	4	...
Bronx	1	...	...	...	1	...	1
Richmond	3	...	3	...	...	...	3
Total Upstate	49	4	33	1	11	27	22
Albany	...	...	...	...	...	...	...
Allegany	...	...	...	...	...	...	...
Broome	...	...	...	...	...	...	...
Cattaraugus	...	...	...	...	...	...	...
Cayuga	...	...	...	...	...	...	...
Chautauqua	...	...	...	...	...	...	...
Chemung	...	...	...	...	...	...	...
Chenango	...	...	...	...	...	...	...
Clinton	...	...	...	...	...	...	...
Columbia	...	...	...	...	...	...	...
Cortland	...	...	...	...	...	...	...
Delaware	...	...	...	...	...	...	...
Dutchess	...	...	...	...	...	...	...
Erie	...	...	...	...	...	...	...
Essex	...	...	...	...	...	...	...
Franklin	...	...	...	...	...	...	...
Fulton	7	2	1	...	4	...	7
Genesee	...	...	...	...	...	...	...
Greene	...	...	...	...	...	...	...
Hamilton	...	...	...	...	...	...	...
Herkimer	...	...	...	...	...	...	...
Jefferson	...	...	...	...	...	...	...
Lewis	...	...	...	...	...	...	...
Livingston	...	...	...	...	...	...	...
Madison	...	...	...	...	...	...	...
Monroe	4	2	...	...	2	2	2
Montgomery	...	...	...	...	...	...	...
Nassau	27	...	27	...	...	18	9
Niagara	...	...	...	...	...	...	...
Oneida	...	...	...	...	...	...	...
Onondaga	2	...	2	...	...	2	...
Ontario	...	...	...	...	...	...	...
Orange	...	...	...	...	...	...	...
Orleans	...	...	...	...	...	...	...
Oswego	...	...	...	...	...	...	...
Otsego	...	...	...	...	...	...	...
Putnam	...	...	...	...	...	...	...
Rensselaer	...	...	...	...	...	...	...
Rockland	...	...	...	...	...	...	...
St. Lawrence	...	...	...	...	...	...	...
Saratoga	...	...	...	...	...	...	...
Schenectady	...	...	...	...	...	...	...
Schoharie	...	...	...	...	...	...	...
Schuyler	...	...	...	...	...	...	...
Seneca	...	...	...	...	...	...	...
Steuben	3	...	...	1	2	3	...
Suffolk	...	...	...	...	...	...	...
Sullivan	...	...	...	...	...	...	...
Tioga	1	...	...	...	1	...	1
Tompkins	...	...	...	...	...	...	...
Ulster	2	...	2	...	...	2	...
Warren	...	...	...	...	...	...	...
Washington	...	...	...	...	...	...	...
Wayne	...	...	...	...	...	...	...
Westchester	1	...	1	...	...	...	1
Wyoming	...	...	...	...	...	...	...
Yates	2	...	...	...	2	...	2

Table A-26
FAMILY COURT
Court Findings in Child Protective Proceedings Involving Child Abuse
Reason for Petition Both Abuse and Neglect (Girls)
January 1, 1982 through December 31, 1982

Region County	Total	Court Findings at Dispositional Hearing				Court Findings Based on	
		Child Is Abused	Child Is Neglected	Both	Neither	Establish- ment of Facts Suffi- cient to Sustain Petition	Consent of All Parties
Total New York State	169	28	91	7	43	76	93
Total New York City	104	16	62	6	20	51	53
New York	13	2	10	...	1	11	2
Kings	80	9	49	6	16	34	46
Queens	9	5	1	...	3	6	3
Bronx	...	...	...	...	...	...	...
Richmond	2	...	2	...	...	...	2
Total Upstate	65	12	29	1	23	25	40
Albany	...	...	...	...	...	...	...
Allegany	...	...	...	...	...	...	...
Broome	...	...	...	...	...	...	...
Cattaraugus	...	...	...	...	...	...	...
Cayuga	...	...	...	...	...	...	...
Chautauqua	...	...	...	...	...	...	...
Chemung	...	...	...	...	...	...	...
Chenango	...	...	...	...	...	...	...
Clinton	...	...	...	...	...	...	...
Columbia	...	...	...	...	...	...	...
Cortland	...	...	...	...	...	...	...
Delaware	...	...	...	...	...	...	...
Dutchess	...	...	...	...	...	...	...
Erie	...	...	...	...	...	...	...
Essex	...	...	...	...	...	...	...
Franklin	1	...	...	...	...	...	...
Fulton	11	6	...	...	1	...	1
Genesee	...	...	...	...	5	...	11
Greene	...	...	...	...	...	...	...
Hamilton	...	...	...	...	...	...	...
Herkimer	...	...	...	...	...	...	...
Jefferson	...	...	...	...	...	...	...
Lewis	...	...	...	...	...	...	...
Livingston	...	...	...	...	...	...	...
Madison	...	...	...	...	...	...	...
Monroe	10	2	4	...	4	2	8
Montgomery	...	...	...	...	...	...	...
Nassau	30	1	20	1	8	15	15
Niagara	...	...	...	...	...	...	...
Oneida	...	...	...	...	...	...	...
Onondaga	1	...	1	...	...	1	...
Ontario	1	1	...	...	...	1	...
Orange	...	...	...	...	...	...	...
Orleans	2	...	...	...	2	...	2
Oswego	...	...	...	...	...	...	...
Otsego	...	...	...	...	...	...	...
Putnam	...	...	...	...	...	...	...
Rensselaer	...	...	...	...	...	...	...
Rockland	...	...	...	...	...	...	...
St. Lawrence	...	...	...	...	...	...	...
Saratoga	...	...	...	...	...	...	...
Schenectady	...	...	...	...	...	...	...
Schoharie	...	...	...	...	...	...	...
Schuyler	...	...	...	...	...	...	...
Seneca	...	...	...	...	...	...	...
Steuben	4	1	1	...	2	4	...
Suffolk	...	...	...	...	...	...	...
Sullivan	...	...	...	...	...	...	...
Tioga	...	...	...	...	...	...	...
Tompkins	...	...	...	...	...	...	...
Ulster	3	1	1	...	1	2	1
Warren	...	...	...	...	...	...	...
Washington	...	...	...	...	...	...	...
Wayne	...	...	...	...	...	...	...
Westchester	2	...	2	...	...	...	2
Wyoming	...	...	...	...	...	...	...
Yates	...	...	...	...	...	...	...

Table A-27
FAMILY COURT
Court Findings in Child Protective Proceedings Involving Child Abuse
Reason For Petition Neglect Only (Boys)
January 1, 1982 through December 31, 1982

Region County	Total	Court Findings at Dispositional Hearing				Court Findings Based on	
		Child Is Abused	Child Is Neglected	Both	Neither	Establish- ment of Facts Suffi- cient to Sustain Petition	Consent of All Parties
Total New York State	2,441	13	1,530	6	892	1,002	1,439
Total New York City	1,059	6	794	3	256	568	491
New York	221	3	172	...	46	130	91
Kings	328	2	264	2	60	173	155
Queens	210	...	132	...	78	73	137
Bronx	242	...	179	1	62	170	72
Richmond	58	1	47	...	10	22	36
Total Upstate	1,382	7	736	3	636	434	948
Albany	20	...	20	...	...	19	1
Allegany	2	...	1	...	1	1	1
Broome	17	...	9	...	8	11	6
Cattaraugus	28	...	13	...	15	14	14
Cayuga	1	...	1	...	...	...	1
Chautauqua	21	...	14	...	7	7	14
Chemung	33	...	28	...	5	2	31
Chenango	6	1	2	1	2	1	5
Clinton	4	1	3	...	...	4	...
Columbia	13	...	6	...	7	2	11
Cortland	11	...	10	...	1	2	9
Delaware	3	...	2	...	1	3	...
Dutchess	12	...	6	...	6	1	11
Erie	245	...	125	2	118	69	176
Essex	...	...	...	...	...	...	...
Franklin	12	...	3	...	9	3	9
Fulton	12	1	2	...	9	...	12
Genesee	15	...	9	...	6	3	12
Greene	12	...	2	...	10	2	10
Hamilton	2	...	2	...	...	2	...
Herkimer	5	...	4	...	1	4	1
Jefferson	13	...	2	...	11	1	12
Lewis	2	...	...	...	2	...	2
Livingston	17	...	11	...	6	...	17
Madison	5	...	5	...	...	1	4
Monroe	122	...	47	...	75	46	76
Montgomery	4	...	...	...	4	...	4
Nassau	123	...	96	...	27	45	78
Niagara	30	1	8	...	21	5	25
Oneida	...	...	...	...	...	...	...
Onondaga	120	...	82	...	38	82	38
Ontario	28	...	21	...	7	14	14
Orange	11	...	...	...	11	...	11
Orleans	13	...	9	...	4	5	8
Oswego	13	3	4	...	6	5	8
Otsego	13	...	12	...	1	11	2
Putnam	7	...	...	...	7	...	7
Rensselaer	3	...	...	...	3	...	3
Rockland	11	...	8	...	3	4	7
St. Lawrence	8	...	7	...	1	1	7
Saratoga	35	...	16	...	19	8	27
Schenectady	23	...	16	...	7	3	20
Schoharie	16	...	10	...	6	6	10
Schuyler	...	...	...	...	...	...	...
Seneca	3	...	...	...	3	...	3
Steuben	22	...	10	...	12	8	14
Suffolk	91	...	29	...	62	6	85
Sullivan	14	...	...	...	14	...	14
Tioga	9	...	5	...	4	4	5
Tompkins	1	...	1	...	...	...	1
Ulster	5	...	1	...	4	1	4
Warren	4	...	1	...	3	1	3
Washington	8	...	2	...	6	2	6
Wayne	30	...	20	...	10	16	14
Westchester	94	...	44	...	50	8	86
Wyoming	6	...	3	...	3	...	6
Yates	4	...	4	...	...	1	3

Table A-28
FAMILY COURT
Court Findings in Child Protective Proceedings Involving Child Abuse
Reason for Petition Neglect Only (Girls)
January 1, 1982 through December 31, 1982

Region County	Total	Court Findings at Dispositional Hearing				Court Findings Based on	
		Child Is Abused	Child Is Neglected	Both	Neither	Establish- ment Of Facts Suffi- cient to Sustain Petition	Consent of All Parties
Total New York State	2,336	9	1,459	5	863	945	1,391
Total New York City	984	6	754	4	220	547	437
New York	150	1	113	...	36	87	63
Kings	349	4	289	3	53	192	157
Queen	213	1	148	1	63	88	125
Bronx	232	...	169	...	63	160	72
Richmond	40	...	35	...	5	20	20
Total Upstate	1,352	3	705	1	643	398	954
Albany	29	2	27	...	...	29	...
Allegany	3	...	2	...	1	2	1
Broome	11	...	3	...	8	8	3
Cattaraugus	25	...	13	...	12	10	15
Cayuga	...	...	...	...	...	...	...
Chautauqua	25	...	18	...	7	8	17
Chemung	42	...	36	...	6	2	40
Chenango	8	...	5	...	3	1	7
Clinton	5	...	4	...	1	3	2
Columbia	17	...	10	...	7	7	10
Cortland	11	1	10	...	...	6	5
Delaware	3	...	1	1	1	2	1
Dutchess	20	...	9	...	11	3	17
Erie	225	...	110	...	115	57	168
Essex	...	...	...	...	...	...	...
Franklin	16	...	2	...	14	1	15
Fulton	19	...	8	...	11	4	15
Genesee	20	...	9	...	11	4	16
Greene	6	...	1	...	5	...	6
Hamilton	...	...	...	...	...	...	...
Herkimer	1	...	1	...	...	1	...
Jefferson	15	...	3	...	12	2	13
Lewis	9	...	...	...	9	...	9
Livingston	22	...	14	...	8	...	22
Madison	9	...	8	...	1	1	8
Monroe	116	...	26	...	90	25	91
Montgomery	3	...	...	...	3	...	3
Nassau	149	...	101	...	48	57	92
Niagara	23	...	9	...	14	8	15
Oneida	...	...	...	...	...	...	...
Onondaga	117	...	76	...	41	75	42
Ontario	30	...	18	...	12	15	15
Orange	6	...	...	...	6	...	6
Orleans	7	...	5	...	2	3	4
Oswego	16	...	8	...	8	2	14
Otsego	18	...	13	...	5	11	7
Putnam	5	...	...	...	5	...	5
Rensselaer	5	...	...	...	5	...	5
Rockland	7	...	5	...	2	1	6
St. Lawrence	8	...	5	...	3	1	7
Saratoga	17	...	9	...	8	9	8
Schenectady	12	...	8	...	4	1	11
Schoharie	23	...	13	...	10	4	19
Schuyler	...	...	...	...	...	...	...
Seneca	3	...	...	...	3	...	3
Steuben	21	...	11	...	10	3	18
Suffolk	68	...	32	...	36	5	63
Sullivan	15	...	2	...	13	...	15
Tioga	12	...	7	...	5	3	9
Tompkins	2	...	1	...	1	...	2
Ulster	1	...	1	...	...	1	...
Warren	4	...	1	...	3	...	4
Washington	4	...	2	...	2	1	3
Wayne	24	...	16	...	8	13	11
Westchester	83	...	38	...	45	8	75
Wyoming	11	...	3	...	8	...	11
Yates	1	...	1	...	...	1	...

Table A-29 (partial)
FAMILY COURT
Disposition of Child Protective Proceedings Involving Child Abuse (Boys)
January 1, 1982 through December 31, 1982

Region County	Total	With- drawn	Dis- missed	Judge- ment Sus- pended	Re- leased to Parent or Other Person	Re- leased to Parent or Other Person Under Social Ser- vices Depart- ment Super- vision	Re- leased to Parent or Other Person Under Pri- vate Agency Super- vision	Pro- tec- tion	Order of Pro- tec- tion	Trans- ferred to a Court With Crim- inal Juris- diction	Trans- ferred to Family Court in Another County	Con- sol- idated With other Child Protec- tive Proce- ding	Con- sol- idated With Family Offense Proce- ding	Con- sol- idated With Protec- tive Proce- ding	Re- moval of Child from Home and Place- ment With Pri- vate Insti- tution	Re- moval of Child from Home and Place- ment With Other Insti- tution	Other	
Total New York State	699	68	150	5	21	139	6	1	41	...	1	4	...	...	9	250	...	4
Total New York City	397	43	82	...	12	80	6	1	10	...	...	3	...	...	8	149	...	3
New York	42	1	5	...	...	13	1	...	...	...	...	...	...	...	1	21	...	...
Kings	131	20	24	...	3	18	2	...	4	...	...	...	...	...	...	57	...	3
Queens	62	...	27	...	3	7	3	...	1	...	...	3	...	...	4	14	...	...
Bronx	150	21	26	...	6	42	...	1	...	...	...	...	...	...	2	53	...	...
Richmond	12	1	...	...	...	...	...	...	5	...	...	...	...	...	1	4	...	...
Total Upstate	302	25	68	5	9	59	...	...	31	...	1	1	...	...	1	101	...	1
Albany	14	1	7	...	3	...	...	...	...	...	...	...	...	...	...	3	...	...
Allegany	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Broome	3	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Cattaraugus	4	1	1	...	...	...	...	...	1	...	...	...	...	...	...	1	...	...
Cayuga	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Chautauque	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Chemung	6	1	...	...	...	1	...	...	...	...	...	...	...	...	...	...	...	...
Chemung	5	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Clinton	3	1	1	...	1	1	...	...	...	...	...	...	...	...	...	2	...	...
Columbia	8	1	1	...	2	...	...	...	...	...	...	...	...	...	...	...	...	...
Columbia	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	4	...	...
Cortland	...	...	...	...	...	2	...	...	...	...	...	...	...	...	...	...	...	...
Delaware	2	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Delaware	21	4	3	...	1	2	...	...	...	...	...	...	...	...	...	...	...	...
Dutchess	42	...	22	...	...	3	...	...	12	...	...	...	...	...	...	6	...	...
Erie	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Essex	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Franklin	...	...	...	...	...	3	...	...	...	...	...	...	...	...	...	...	...	...
Franklin	9	...	5	...	...	...	...	...	...	...	...	...	...	...	...	1	...	...
Fulton	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Genesee	1	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Greene	2	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Hamilton	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Herkimer	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...

Table A-29(concluded)
FAMILY COURT
Dispositions of Child Protective Proceedings Involving Child Abuse (Boys)
January 1, 1982 through December 31, 1982

Region County	Total	With- drawn	Dis- missed	Judge- ment Sus- pended	Re- leased to Parent or Other Person	Re- leased to Parent or Other Person Under Pri- vate Agency Super- vision	Pro- tec- tion	Order of Pro- tec- tion	Trans- ferred to a Court With Crim- inal Juris- dic- tion	Trans- ferred to Family Court in Another County	Con- sol- idated With An- other Child Pro- tec- tive Pro- ceed- ing	Con- sol- idated With Family Pro- ceed- ing	Con- sol- idated With Pro- ceed- ing	Re- moval of Child from Home and Place- ment With Rel- ative	Re- moval of Child from Home and Place- ment With Pri- vate Insti- tution	Re- moval of Child from Home and Place- ment With Other Author- ized Agency	Other
Jefferson	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Lewis	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Livingston	2	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Madison	33	3	15	1	...	...	...	...	...	...	...	...	...	...	...	...	...
Monroe	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Montgomery	30	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Nassau	4	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Niagara	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Oneida	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Ontario	30	2	5	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Orleans	3	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Oswego	3	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Putnam	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Rensselaer	3	2	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Rockland	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
St. Lawrence	4	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Saratoga	7	3	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Schenectady	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Schoharie	2	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Scheneca	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Steuben	12	2	...	4	...	...	...	...	...	...	...	...	...	...	...	...	...
Suffolk	6	1	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Sullivan	3	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Tioga	1	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Tompkins	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Ulster	4	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Warren	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Washington	3	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Wayne	2	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Westchester	16	1	2	...	1	...	...	...	...	...	...	...	...	...	...	...	...
Wyoming	6	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Yates	3	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...

For the purpose of compiling this table, only one disposition per case was considered. If more than one disposition was reported for a case, the one deemed to be most significant was used.

Table A-30 (partial)
FAMILY COURT
Dispositions of Child Protective Proceedings Involving Child Abuse (Girls)
January 1, 1982 through December 31, 1982

Region County	Total	With- drawn	Dis- missed	Judg- ment Suspend- ed	Re- leased to Parent or Other Person	Re- leased to Parent or Other Person Under Social Ser- vices Depart- ment Super- vision	Re- leased to Parent or Other Person Under Pri- vate Agency Super- vision	Pro- tec- tion	Order of Pro- tec- tion	Trans- ferred to a Court With Crim- inal Juris- dic- tion	Trans- ferred to Family Court in Another County	Con- solidated With Family Off- ense Pro- ceed- ing	Con- solidated With Child Home and Place- ment With Non- Rela- tive	Re- moval of Child From Home and Place- ment With Pri- vate Insti- tution	Re- moval of Child From Home and Place- ment With Other Author- ized Agency	Other	
Total New York State	1,031	92	210	12	32	185	8	1	93	...	4	3	3	371	...	...	5
Total New York City	475	57	94	...	17	78	8	...	17	...	...	1	1	197	...	...	1
New York	39	2	3	...	3	7	1	...	...	...	...	...	...	23	...	...	...
Kings	188	32	33	...	5	19	2	...	10	...	...	...	1	85	...	...	1
Queens	104	5	46	...	1	6	5	...	3	...	...	1	...	25	...	...	...
Bronx	142	18	12	...	8	44	...	...	4	...	...	...	2	58	...	...	...
Richmond	12	...	...	...	...	2	...	...	...	...	...	...	...	6	...	...	...
Total Upstate	556	35	116	12	15	107	...	1	76	...	4	2	2	174	...	...	4
Albany	17	...	4	...	4	2	...	...	...	...	...	...	...	3	...	...	3
Allegany	2	...	...	...	1	...	...	...	2	...	...	...	...	1	...	...	...
Broome	8	...	5	1	...	1	...	...	...	...	...	...	...	4	...	...	1
Cattaraugus	6	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Cayuga	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Chautauqua	1	...	...	...	...	4	...	...	...	...	...	...	...	...	...	...	...
Chemung	10	1	...	...	3	...	...	...	...	...	...	...	...	1	...	...	...
Chenango	8	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Clinch	7	...	5	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Columbia	8	4	1	...	1	...	...	...	...	...	1	...	...	1	...	...	...
Corland	1	...	...	...	...	1	...	...	...	...	...	...	...	...	...	...	...
Delaware	19	...	4	4	...	5	...	1	...	...	1	...	...	...	...	...	...
Dutchess	21	...	9	...	1	2	...	...	16	...	...	...	...	...	...	...	...
Dutchess Erie	69	...	24	...	2	13	...	...	...	...	...	...	...	...	...	...	...
Essex	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Franklin	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Fulton	13	...	5	1	...	1	...	...	...	...	...	...	...	...	...	...	...
Genesee	7	1	2	...	...	1	...	2	...	...	...	...	...	...	...	...	...
Greene	1	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Hamilton	2	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Herkimer	...	...	...	...	...	...	...	...	2	...	...	...	...	...	...	...	...
Jefferson	...	...	1	...	...	1	...	...	2	...	...	...	...	...	...	...	...
Total	3	...	1	...	...	...	...	...	...	...	...	...	...	1	...	...	...

Table A-30 (concluded)
FAMILY COURT
Disposition of Child Protective Proceedings Involving Child Abuse (Girls)
January 1, 1982 through December 31, 1982

[illegible]

For the purpose of compiling this table, only one disposition per case was considered. If more than one disposition was reported for a case, the one deemed to be the most significant was used.

Table A-31
FAMILY COURT
Child Protective Petitions Involving Child Abuse, by Sex
Disposed of Between January 1, 1982 and December 31, 1982

Region County	Boys			Girls		
	Total	Petition Filed Prior to January 1, 1982	Petition Filed on or After January 1, 1982	Total	Petition Filed Prior to January 1, 1982	Petition Filed on or After January 1, 1982
Total New York State	699	366	333	1,031	501	530
Total New York City	397	215	182	475	235	240
New York	42	17	25	39	12	27
Kings	131	88	43	188	106	82
Queens	62	27	35	94	42	52
Bronx	150	76	74	142	66	76
Richmond	12	7	5	12	9	3
Total Upstate	302	151	151	556	266	290
Albany	14	11	3	17	6	11
Allegany	...	...	...	2	1	1
Broome	3	...	3	8	1	7
Cattaraugus	4	3	1	6	5	1
Cayuga	...	...	...	...	...	...
Chautauqua	...	...	...	1	1	...
Chemung	6	...	6	10	3	7
Chenango	5	2	3	8	4	4
Clinton	3	1	2	7	5	2
Columbia	8	...	8	8	4	4
Cortland	...	...	...	1	...	1
Delaware	2	...	2	19	3	16
Dutchess	21	5	16	21	10	11
Erie	42	20	22	69	30	39
Essex	...	...	...	...	...	...
Franklin	...	...	...	2	2	...
Fulton	9	6	3	13	9	4
Genesee	1	...	1	7	3	4
Greene	2	...	2	1	...	1
Hamilton	...	...	...	2	...	2
Herkimer	...	...	...	...	...	...
Jefferson	...	...	...	3	1	2
Lewis	...	...	...	...	...	...
Livingston	1	...	1	6	2	4
Madison	2	2	...	3	2	1
Monroe	33	22	11	76	42	34
Montgomery	1	1	...	2	2	...
Nassau	30	13	17	34	16	18
Niagara	4	2	2	5	1	4
Oneida	1	1	...	...	...	...
Onondaga	30	23	7	56	31	25
Ontario	...	...	...	13	6	7
Orange	3	...	3	7	2	5
Orleans	1	1	...	6	3	3
Oswego	3	1	2	5	3	2
Otsego	...	...	...	3	1	2
Putnam	1	1	...	2	2	...
Rensselaer	3	1	2	1	...	1
Rockland	...	...	...	4	1	3
St. Lawrence	4	...	4	3	...	3
Saratoga	...	...	...	4	2	2
Schenectady	7	4	3	19	4	15
Schoharie	...	...	...	1	...	1
Schuyler	2	...	2	...	...	...
Seneca	...	...	...	1	1	...
Steuben	12	8	4	21	11	10
Suffolk	6	3	3	11	7	4
Sullivan	3	2	1	4	2	2
Tioga	1	...	1	3	...	3
Tompkins	...	...	...	6	...	6
Ulster	4	1	3	5	1	4
Warren	...	...	...	5	4	1
Washington	3	2	1	6	3	3
Wayne	2	2	...	8	8	...
Westchester	16	11	5	21	17	4
Wyoming	6	...	6	7	1	6
Yates	3	2	1	3	3	...

Table A-32
FAMILY COURT
Child Abuse Part Statistics*, By Sex (Boys)
January 1, 1982 through December 31, 1982

Region County	Total	Number Disposed Not In- dicating Whether Court Has a Child Abuse Part	Courts Having Child Abuse Part		Courts Not Having Child Abuse Part	
			Number of Cases Disposed in Child Abuse Part	Number of Cases Disposed in Other Than Child Abuse Part	Number Not Ind- icating Where Disposed	Number of Cases Disposed
Total New York State	680	...	411	40	...	229
Total New York City	388	...	328	40	...	20
New York	39	...	38	...	...	1
Kings	127	...	87	33	...	7
Queens	62	...	59	2	...	1
Bronx	149	...	144	5	...	...
Richmond	11	...	...	...	...	11
Total Upstate	292	...	83	...	...	209
Albany	14	...	1	...	...	13
Allegany	...	...	...	...	...	...
Broome	3	...	...	...	...	3
Cattaraugus	4	...	...	...	...	4
Cayuga	...	...	...	...	...	...
Chautauqua	...	...	...	...	...	...
Chemung	6	...	...	...	...	6
Chenango	3	...	...	...	...	3
Clinton	2	...	...	...	...	2
Columbia	8	...	...	...	...	8
Cortland	...	...	...	...	...	...
Delaware	2	...	...	...	...	2
Dutchess	21	...	...	...	...	21
Erie	40	...	40	...	...	...
Essex	...	...	...	...	...	...
Franklin	...	...	...	...	...	...
Fulton	8	...	...	...	...	8
Genesee	1	...	...	...	...	1
Greene	2	...	...	...	...	2
Hamilton	...	...	...	...	...	...
Herkimer	...	...	...	...	...	...
Jefferson	...	...	...	...	...	...
Lewis	...	...	...	...	...	...
Livingston	1	...	...	...	...	1
Madison	2	...	...	...	...	2
Monroe	33	...	...	...	...	33
Montgomery	1	...	...	...	...	1
Nassau	30	...	7	...	...	23
Niagara	3	...	...	...	...	3
Oneida	1	...	...	...	...	1
Onondaga	30	...	29	...	...	1
Ontario	...	...	...	...	...	...
Orange	3	...	...	...	...	3
Orleans	1	...	...	...	...	1
Oswego	...	...	...	...	...	...
Otsego	...	...	...	...	...	...
Putnam	1	...	...	...	...	1
Rensselaer	3	...	...	...	...	3
Rockland	...	...	...	...	...	...
St. Lawrence	4	...	...	...	...	4
Saratoga	...	...	...	...	...	...
Schenectady	7	...	...	...	...	7
Schoharie	...	...	...	...	...	...
Schuyler	2	...	...	...	...	2
Seneca	...	...	...	...	...	...
Steuben	12	...	...	...	...	12
Suffolk	6	...	5	...	...	1
Sullivan	3	...	...	...	...	3
Tioga	1	...	1	...	...	...
Tompkins	...	...	...	...	...	...
Ulster	4	...	...	...	...	4
Warren	...	...	...	...	...	...
Washington	3	...	...	...	...	3
Wayne	2	...	...	...	...	2
Westchester	16	...	...	...	...	16
Wyoming	6	...	...	...	...	6
Yates	3	...	...	...	...	3

*This table includes only cases in which the reason for petition was abuse or both abuse and neglect regardless of court finding.

Table A-33
FAMILY COURT
Child Abuse Part Statistics*, By Sex (Girls)
January 1, 1982 through December 31, 1982

Region County	Total	Number Disposed Not Indicat- ing Whether Court Has a Child Abuse Part	Courts Having Child Abuse Part		Courts Not Having Child Abuse Part	
			Number of Cases Disposed in Child Abuse Part	Number of Cases Disposed in Other Than Child Abuse Part	Number Not In- dicating Where Disposed	Number of Cases Disposed
New York State	1,017	...	539	42	...	436
New York City	465	...	398	38	...	29
New York	38	...	35	1	...	2
Kings	181	...	136	31	...	14
Queens	92	...	90	1	...	1
Bronx	142	...	137	5	...	...
Richmond	12	...	...	...	...	12
Total Upstate	552	...	141	4	...	407
Albany	15	...	1	...	...	14
Allegany	2	...	...	...	...	2
Broome	8	...	2	...	...	6
Cattaraugus	6	...	...	...	...	6
Cayuga	...	...	...	...	...	...
Chautauqua	1	...	...	...	...	1
Chemung	10	...	...	...	...	10
Chenango	8	...	...	...	...	8
Clinton	7	...	...	...	...	7
Columbia	8	...	...	...	...	8
Cortland	...	...	...	...	...	...
Delaware	18	...	2	...	...	16
Dutchess	21	...	1	...	...	20
Erie	69	...	66	...	...	3
Essex	...	...	...	...	...	...
Franklin	2	...	...	...	...	2
Fulton	13	...	1	...	...	12
Genesee	7	...	...	...	...	7
Greene	1	...	...	...	...	1
Hamilton	2	...	...	...	...	2
Herkimer	...	...	...	...	...	...
Jefferson	3	...	...	...	...	3
Lewis	...	...	...	...	...	...
Livingston	6	...	...	...	...	6
Madison	3	...	...	...	...	3
Monroe	76	...	...	...	...	76
Montgomery	2	...	...	...	...	2
Nassau	34	...	4	3	...	27
Niagara	5	...	...	...	...	5
Oneida	...	...	...	...	...	...
Onondaga	56	...	55	...	...	1
Ontario	13	...	1	...	...	12
Orange	7	...	...	...	...	7
Orleans	6	...	...	...	...	6
Oswego	5	...	...	...	...	5
Otsego	3	...	...	...	...	3
Putnam	2	...	...	...	...	2
Rensselaer	1	...	...	...	...	1
Rockland	4	...	...	...	...	4
St. Lawrence	3	...	...	...	...	3
Saratoga	4	...	...	...	...	4
Schenectady	19	...	...	...	...	19
Schoharie	1	...	...	...	...	1
Schuyler	...	...	...	...	...	...
Seneca	1	...	...	...	...	1
Steuben	21	...	...	...	...	21
Suffolk	11	...	7	1	...	3
Sullivan	4	...	...	...	...	4
Tioga	3	...	...	...	...	3
Tompkins	6	...	...	...	...	6
Ulster	5	...	...	...	...	5
Warren	5	...	...	...	...	5
Washington	6	...	...	...	...	6
Wayne	8	...	...	...	...	8
Westchester	21	...	1	...	...	20
Wyoming	7	...	...	...	...	7
Yates	3	...	...	...	...	3

*This table includes only cases in which the reason for petition was abuse or both abuse and neglect regardless of court finding.

Table A-34
FAMILY COURT
Detention of Children in Supervision Proceedings (Boys Only)
January 1, 1982 through December 31, 1982

Region County	Total*	Not Detained	Detained		Length of Detention After Petition								
			Before Petition	After Petition	1-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366 Days Or More	Over 730 Days
Total New York State	5,207	4,259	16	944	115	79	81	110	403	128	24	4	...
Total New York City	1,787	1,281	3	503	57	36	37	35	225	88	21	4	...
New York	177	141	1	35	7	3	5	3	8	8	1	...	...
Kings	752	502	...	250	30	17	22	15	116	38	10	2	...
Queens	436	354	2	80	5	7	3	10	42	11	2	...	...
Bronx	358	236	...	122	10	9	7	6	54	27	7	2	...
Richmond	64	48	...	16	5	...	...	1	5	4	1	...	...
Total Upstate	3,420	2,973	13	441	58	43	44	75	178	40	3	...	...
Albany	175	116	...	59	3	7	9	25	15	...	...	...	...
Allegany	8	7	...	1	1	...	...	...	...	...	...	...	...
Broome	70	68	...	7	...	2	1	2	2	...	...	...	...
Cattaraugus	15	15	...	...	...	...	...	...	...	...	...	...	...
Cayuga	9	9	...	...	...	...	...	...	...	...	...	...	...
Chautauqua	54	54	...	...	...	...	...	...	...	...	...	...	...
Chemung	44	31	...	13	1	...	...	3	9	...	...	...	...
Chenango	19	19	...	...	...	...	...	...	...	...	...	...	...
Clinton	15	13	...	2	...	...	...	2	...	...	...	...	...
Columbia	25	25	...	...	...	...	...	...	...	...	...	...	...
Cortland	59	49	3	10	1	2	1	1	5	...	...	...	...
Delaware	7	7	...	...	...	...	...	...	...	...	...	...	...
Dutchess	110	95	...	15	2	2	...	5	5	...	...	...	...
Erie	394	315	...	79	7	4	8	7	32	20	1	...	...
Essex	15	14	1	1	...	...	...	...	1	...	...	...	...
Franklin	9	6	...	3	...	...	...	3	...	...	...	...	...
Fulton	14	13	...	1	1	...	...	...	...	...	...	...	...
Genesee	29	29	...	...	...	...	...	...	...	...	...	...	...
Greene	23	23	...	...	...	...	...	...	...	...	...	...	...
Hamilton	...	...	...	...	...	...	...	...	...	...	...	...	...
Herkimer	21	21	...	...	...	...	...	...	...	...	...	...	...
Jefferson	64	64	...	...	...	...	...	...	...	...	...	...	...
Lewis	2	2	...	...	...	...	...	...	...	...	...	...	...
Livingston	17	17	...	...	...	...	...	...	...	...	...	...	...
Madison	23	22	...	1	1	...	...	...	...	...	...	...	...
Monroe	174	114	...	60	7	6	6	2	33	5	1	...	...
Montgomery	20	17	...	3	3	...	...	...	...	...	...	...	...
Nassau	263	262	...	1	...	...	1	...	...	...	...	...	...
Niagara	68	62	...	6	1	2	...	...	1	...	...	...	...
Oneida	20	20	...	...	...	...	...	...	...	...	...	...	...
Onondaga	183	146	1	37	4	2	4	5	18	4	...	...	...
Ontario	24	22	2	2	...	1	1	...	...	...	...	...	...
Orange	95	94	...	1	...	...	...	...	1	...	...	...	...
Orleans	11	10	...	1	...	...	...	...	...	...	1	...	...
Oswego	13	11	...	2	2	...	...	...	...	...	...	...	...
Otsego	10	9	...	1	...	...	...	...	1	...	...	...	...
Putnam	18	14	...	4	...	1	...	1	2	...	...	...	...
Rensselaer	79	72	...	7	...	...	1	2	4	...	...	...	...
Rockland	31	26	...	5	1	1	...	...	2	1	...	...	...
St. Lawrence	10	8	...	2	2	...	...	...	...	...	...	...	...
Saratoga	39	32	1	6	1	4	1	...	...	...	...	...	...
Schenectady	64	59	...	5	2	2	...	1	...	...	...	...	...
Schoharie	5	4	...	1	...	...	...	...	1	...	...	...	...
Schuyler	5	3	1	2	...	...	...	1	1	...	...	...	...
Seneca	28	28	...	...	...	...	...	...	...	...	...	...	...
Steuben	32	30	...	2	1	...	...	...	1	...	...	...	...
Suffolk	587	530	...	57	8	5	6	8	28	2	...	...	...
Sullivan	30	30	...	...	...	...	...	...	...	...	...	...	...
Tioga	13	13	...	...	...	...	...	...	...	...	...	...	...
Tompkins	12	9	...	3	...	...	...	...	2	1	...	...	...
Ulster	54	53	...	1	...	...	...	...	...	...	...	...	...
Warren	15	13	2	2	2	...	...	1	...	...	...	...	...
Washington	34	33	1	1	...	...	...	...	1	...	...	...	...
Wayne	18	15	1	3	1	...	...	1	1	...	...	...	...
Westchester	232	199	...	33	6	2	2	5	11	7	...	...	...
Wyoming	12	11	...	1	...	...	...	...	1	...	...	...	...
Yates	...	...	...	...	...	...	...	...	...	...	...	...	...

*FIGURES IN COLUMNS 2,3, AND 4 EXCEED TOTAL BECAUSE SOME PROCEEDINGS ARE INCLUDED IN BOTH COLUMNS 3 AND 4. THERE WERE 12 SUCH PROCEEDINGS STATEWIDE.

Table A-35
FAMILY COURT
Detention of Children in Supervision Proceedings (Girls Only)
January 1, 1982 through December 31, 1982

Region County	Total*	Not Detained	Detained		Length of Detention After Petition								
			Before Petition	After Petition	1-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366 Days Or More	Over 730 Days
Total New York State	4,770	3,766	22	993	121	100	85	147	392	122	24	2	...
Total New York City	1,769	1,255	3	512	51	45	39	83	188	83	21	2	...
New York	246	198	2	47	11	3	4	9	15	4	1	...	...
Kings	752	505	1	246	29	27	16	35	85	45	9	...	...
Queens	408	316	...	90	1	5	9	25	38	10	1	1	...
Bronx	318	206	...	112	7	8	9	11	45	23	8	1	...
Richmond	47	30	...	17	3	2	1	3	5	1	2	...	...
Total Upstate	3,001	2,511	19	481	70	55	46	64	204	39	3	...	...
Albany	128	91	...	37	2	8	4	11	9	3	...	...	...
Allegany	1	1	...	...	...	...	...	...	...	...	...	...	...
Broome	92	77	1	15	5	...	2	6	2	...	...	...	...
Cattaraugus	15	15	...	...	...	...	...	...	...	...	...	...	...
Cayuga	6	5	1	...	...	...	...	...	...	...	...	...	...
Chautauqua	55	55	...	...	...	...	...	...	...	...	...	...	...
Chemung	35	23	1	11	...	...	...	1	10	...	...	...	...
Chenango	12	11	...	1	...	1	...	...	...	...	...	...	...
Clinton	16	15	...	1	...	...	...	1	...	...	...	...	...
Columbia	29	27	...	2	...	...	...	...	1	1	...	...	...
Cortland	9	3	3	5	2	...	...	...	3	...	...	...	...
Delaware	4	4	...	...	...	...	...	...	...	...	...	...	...
Dutchess	90	80	...	10	2	2	...	2	4	...	...	...	...
Erie	376	288	1	87	9	3	7	5	49	13	1	...	...
Essex	18	15	1	...	1	1	...	...	...	...	...	...	...
Franklin	9	9	...	...	...	...	...	...	...	...	...	...	...
Fulton	18	15	1	...	1	...	1	...	1	...	...	...	...
Genesee	27	27	...	...	...	...	...	...	...	...	...	...	...
Greene	14	14	...	...	...	...	...	...	...	...	...	...	...
Hamilton	...	...	...	...	...	...	...	...	...	...	...	...	...
Herkimer	19	18	...	1	1	...	...	...	...	...	...	...	...
Jefferson	28	28	...	...	...	...	...	...	...	...	...	...	...
Lewis	3	2	...	1	...	...	1	...	...	...	...	...	...
Livingston	1	11	...	...	...	...	...	...	...	...	...	...	...
Madison	18	13	...	5	1	2	1	...	...	1	...	...	...
Monroe	205	118	...	87	5	5	7	8	52	9	1	...	...
Montgomery	23	17	...	6	2	...	2	2	...	...	...	...	...
Nassau	227	224	...	3	3	...	...	...	...	...	...	...	...
Niagara	48	38	...	10	6	1	2	...	1	...	...	...	...
Oneida	6	6	...	...	...	...	...	...	...	...	...	...	...
Onondaga	179	127	...	52	6	5	3	8	23	7	...	...	...
Ontario	26	21	...	5	...	2	1	2	...	...	...	...	...
Orange	71	71	...	...	...	...	...	...	...	...	...	...	...
Orleans	3	3	...	...	...	...	...	...	...	...	...	...	...
Oswego	23	16	2	5	2	2	1	...	...	...	...	...	...
Otsego	4	4	...	...	...	...	...	...	...	...	...	...	...
Putnam	8	6	...	2	...	1	...	...	1	...	...	...	...
Rensselaer	55	43	...	12	3	...	...	3	6	...	...	...	...
Rockland	19	12	...	7	...	1	1	1	4	...	...	...	...
St. Lawrence	10	10	...	...	...	...	...	...	...	...	...	...	...
Saratoga	51	41	...	10	2	4	4	...	...	...	...	...	...
Schenectady	51	50	...	1	...	1	...	...	...	...	...	...	...
Schoharie	3	2	1	1	1	...	...	...	...	...	...	...	...
Schuyler	4	4	...	...	...	...	...	...	...	...	...	...	...
Seneca	21	20	...	1	...	...	...	...	1	...	...	...	...
Steuben	37	30	...	7	...	2	2	2	1	...	...	...	...
Suffolk	491	437	3	53	11	4	6	11	21	...	...	...	...
Sullivan	24	24	...	...	...	...	...	...	...	...	...	...	...
Tioga	10	7	...	3	1	1	1	...	...	...	...	...	...
Tompkins	12	8	...	4	1	1	...	...	1	1	...	...	...
Ulster	49	49	...	...	...	...	...	...	...	...	...	...	...
Warren	13	13	...	...	...	...	...	...	...	...	...	...	...
Washington	22	21	1	1	...	1	...	...	1	...	...	...	...
Wayne	25	17	...	8	2	5	...	...	1	...	...	...	...
Westchester	235	213	3	21	1	1	...	1	13	4	1	...	...
Wyoming	11	10	...	1	...	1	...	...	...	...	...	...	...
Yates	2	2	...	...	...	...	...	...	...	...	...	...	...

*Figures in Columns 2, 3, and 4 exceed total because some proceedings are included in both columns 3 and 4.
There were 11 such proceedings statewide.

Table A-36(partial)
FAMILY COURT
Original Petitions Initially Disposed
Persons in Need of Supervision Proceedings (Boys Only)
Nature of Dispositions by Region and County
January 1, 1982 through December 31, 1982

Region County	Total Dis- posi- tions	No Adjudication						Adjudication						Placement									
		Dis- missed for Failure of Proof at Fact- finding Hearing	Other Dis- mis- sal at Fact- find- ing Hear- ing	Dis- mis- sal at Dis- posi- tional Hear- ing	Dis- mis- sal for Failure to Pro- secute	Dis- mis- sal with- out Pre- judice	Dis- mis- sal in fur- ther- ance of Justice (ACD)	Other Dis- mis- sal	With- drawn	Trans- ferred to An- other County	Dis- charged to An- other Peti- tion	Dis- charged to Men- tal Hy- giene Insti- tution	Dis- charged with Warn- ing Sus- pended	Pro- bation with- out Place- ment	Own Home Rela- tive	Sub- sidi- ary Pro- tec- tion Per- son	Comm. of Social Ser- vices	Divi- sion for Youth Title 2	Divi- sion for Youth Title 3 (NYC STS)	Re- stric- tive Place- ment (DFY) 5 yrs.	Re- stric- tive Place- ment (DFY) 3 yrs.	Other Place- ment	
Total New York State	5,027	43	...	58	381	243	791	544	908	16	96	...	...	13	1,218	14	625	73	22	...	...	...	4
Total New York City	1,787	4	...	19	302	134	209	359	472	2	1	...	...	1	5	91	1	171	11	3	...	...	2
New York	177	...	...	...	1	45	12	10	79	1	1	...	...	...	1	2	...	11	1	...	...	...	...
Kings	752	1	...	7	83	64	107	176	143	...	...	...	...	...	4	59	...	101	4	1	...	...	2
Queens	436	1	...	5	130	26	42	58	119	...	...	...	...	...	19	...	...	30	5	1	...	...	...
Bronx	358	2	...	4	36	30	24	98	124	...	...	...	...	...	9	...	...	27	1	1	...	...	...
Richmond	64	...	...	2	6	2	26	14	7	1	...	...	...	1	...	1	2	...	...	1	...	...	...
Total Upstate	3,420	39	...	39	79	109	582	185	436	14	95	...	...	12	1,127	13	454	62	19	...	...	...	2
Albany	175	2	...	4	6	...	29	21	7	...	30	...	...	1	36	1	19	5	...	...	...	...	...
Allegany	8	...	...	...	...	1	1	2	1	...	1	...	...	...	1	...	23	2	...	...	...	...	...
Brockport	70	6	...	4	5	2	6	7	1	1	1	...	...	...	18	...	...	1	...	...	...	...	...
Cattaraugus	15	...	...	...	...	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Cayuga	9	...	...	...	...	...	1	...	...	...	...	...	...	...	4	...	...	...	...	...	...	...	...
Chautauque	54	...	...	1	1	3	4	3	1	1	...	...	...	1	30	...	7	2	...	...	...	1	...
Chemung	44	...	...	1	...	2	...	1	4	...	...	...	...	...	5	...	14	...	2	...	...	...	...
Chemung	19	1	...	...	...	1	1	1	...	...	...	...	...	...	9	...	...	...	...	2	...	...	...
Clinton	63	...	...	1	1	...	1	1	2	1	...	...	...	...	4	...	7	...	...	...	...	...	...
Columbia	15	...	...	...	...	1	1	1	1	2	...	...	...	...	6	1	...	...	...	...	...	...	...
Corland	25	...	...	2	1	...	1	1	1	...	...	...	...	...	4	...	...	...	...	...	...	...	...
Delaware	7	...	...	1	1	...	1	...	7	2	1	...	...	...	9	...	2	2	...	...	...	...	...
Dutchess	110	...	...	1	3	3	16	3	22	10	...	...	...	2	36	1	13	...	1	...	...	...	...
Essex	384	9	4	19	25	84	...	20	18	...	...	...	...	4	128	...	59	24	...	...	...	...	...
Franklin	15	...	...	...	...	...	...	...	...	...	...	...	...	...	3	...	5	2	...	...	...	...	...
Fulton	9	...	...	...	...	...	...	...	...	...	...	...	...	...	3	...	5	...	...	...	...	...	...
Genesee	14	...	...	...	...	...	...	...	...	...	...	...	...	...	1	...	8	1	...	...	...	...	...
Greene	28	...	...	...	...	...	...	...	...	...	...	...	...	...	1	...	1	...	...	...	...	...	...
Hamilton	23	...	...	...	...	...	...	...	...	...	...	...	...	...	1	...	1	...	...	...	...	...	...
Herkimer	21	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Jefferson	64	2	...	...	...	2	2	1	7	7	...	...	...	1	48	...	...	...	...	...	...	...	...

Table A-36 (concluded)
FAMILY COURT
Original Petitions Initially Disposed
Persons in Need of Supervision Proceedings (Boys Only)
Nature of Dispositions by Region and County
January 1, 1982 through December 31, 1982

Region County	No Adjudication										Adjudication						Placement						
	Total Dispositions	Dismissed for Failure of Proof at Fact-Finding Hearing	Other Dismissal at Fact-Finding Hearing	Dismissed at Dispositional Hearing	Dismissed for Failure to Prosecute	Dismissed without Prejudice	Dismissed in Furtherance of Justice (ACD)	Other Dismissal	Withdrawn	Transferred to Another County	Discharge to Another Institution	Discharged to Mental Hygiene Institution	Discharged to Mental Hygiene Institution	Discharged with Warning	Judgment Suspended	Probation without Placement	Own Home Relative or Suitable Private Person	Comm. of Social Services	Division For Youth Title 2	Division For Youth Title 3 (NY-STS)	Restrictive Placement (DFY) 5 yrs.	Restrictive Placement (DFY) 3 yrs.	Other Placement
Lewis	2						5	2		2						2		3					
Livingston	17						5			4						5		7					
Madison	23						39	22	22	1	2					2		36					
Montgomery	174						14	4	4	1						4		3					
Nassau	263	1					8	6	29	1	13					2		21					
Niagara	68	2					11	4	4							3		5					
Oneida	20																	2					
Onondaga	183						48	18	13							8		44					
Ontario	24						7	3	12							29		4					
Oranget	95						1	13	1							33		44					
Orleans	11							3	1							1		23					
Oswego	13															2		4					
Otsego	10															1		3					
Putnam	18								1							10		2					
Rensselaer	79						6	1								2		6					
Rockland	31						1	24	6		1					7		7					
St. Lawrence	39						2	3	5		1					10		2					
Saratoga	10						1									12		6					
Schenectady	64						5	3	1							5		4					
Schoharie	5								5	1	6					31		7					
Schuyler	5						1									1		6					
Seneca	28						1	2	1							1		1					
Stearns	32						5	6	4							5		1					
Suffolk	587	4					20	3	158	4	1					16		30					
Sullivan	30						2	3	7		4					6		5					
Tioga	13						3		2							179		7					
Tompkins	12															3		7					
Ulster	54						3	1	13							3		2					
Warren	15						18	1								14		1					
Washington	34						3									6		5					
Wayne	18						2	6	2							20		1					
Westchester	232	2					2	2	1	1						1		3					
Wyoming	12						25	12	52		21					14		22					
Yates									1		2					3		4					

Table A-37(partial)
FAMILY COURT
Original Petitions Initially Disposed
Persons in Need of Supervision Proceedings (Girls Only)
Nature of Dispositions by Region and County
January 1, 1982 through December 31, 1982

[illegible]

Table A-37 (concluded)
FAMILY COURT
Original Petitions Initially Disposed
Persons in Need of Supervision Proceedings (Girls Only)
Nature of Dispositions by Region and County
January 1, 1982 through December 31, 1982

Region County	No Adjudication										Adjudication									
	Total Dispo- sitions	Dis- missed for Failure of Proof at Fact Finding Hearing	Other Dis- missed at Fact Finding Hearing	Dis- missed at Disposi- tional Hearing	Dis- missed for Failure to Prose- cute	Dis- missed with- out Pre- trial advice	Dis- missed in fur- ther- ance of Pre- trial advice	Other Dis- missed	Trans- ferred to Another County	Dis- charged to Mental Insti- tution	Dis- charged to Mental Hy- giene Instit- tution	Dis- charged with Warn- ing	Judg- ment Sus- pended	Pro- tec- tion with- out Place- ment	Placement					
															Own Home Rela- tive or Sub- sti- tute Pri- vate Per- son	Comm. Social Ser- vices	Divi- sion for Youth Title 2	Divi- sion for Youth Title 3 (NY- IDFY) 5 yrs.	Re- stric- tive Place- ment (IDFY) 3 yrs.	Other Place- ment
Lewis	3																			
Livinston	11																			
Madison	18																			
Montroe	205																			
Montgomery	23																			
Nassau	227	1																		
Niagara	48	1																		
Onondaga	6																			
Ontario	179																			
Oranget	26																			
Oranget	71	2																		
Oswego	23																			
Otsego	4																			
Putnam	8																			
Rensselaer	55																			
Rockland	19																			
St. Lawrence	10	2																		
Saratoga	51																			
Schenectady	51																			
Schoharie	3																			
Schuyler	4																			
Seneca	21																			
Steuben	37	1																		
Suffolk	491	9																		
Sullivan	24																			
Tioga	10																			
Tompkins	12																			
Ulster	49																			
Warren	13																			
Washington	22	2																		
Wayne	25																			
Westchester	235																			
Wyoming	11																			
Yates	2																			

Table A-38
FAMILY COURT
Reasons for Juvenile Delinquency Proceedings by Sex and by Region
Original Delinquency Allegations (Other than Designated Felony) of Delinquency Petitions Only
January 1, 1982 through December 31, 1982

New York City			
Delinquency Petition Allegations	Boys	Girls	Both
Homicide (PL ART 125)	11 (0.075%)	... (0.000%)	11 (0.069%)
Kidnapping (PL ART 135)	42 (0.287%)	3 (0.219%)	45 (0.281%)
Rape (PL ART 130)	39 (0.267%)	1 (0.073%)	40 (0.250%)
Other Sex Offenses (PL ART 130)	123 (0.841%)	5 (0.365%)	128 (0.800%)
Robbery (PL ART 160)	1,617 (11.052%)	116 (8.467%)	1,733 (10.831%)
Assault or Related Off. (PL ART 120)	998 (6.821%)	180 (13.139%)	1,178 (7.362%)
Criminal Sale Control Substance (PL ART 220)	54 (0.369%)	2 (0.146%)	56 (0.350%)
Criminal Possession Control Substance (PL ART 220)	104 (0.711%)	4 (0.292%)	108 (0.675%)
Other Drug Offense (PL ART 220)	16 (0.109%)	1 (0.073%)	17 (0.106%)
Criminal Possession of Weapon (PL ART 265)	721 (4.928%)	93 (6.788%)	814 (5.087%)
Burglary or Related Offenses (PL ART 140)	1,426 (9.746%)	86 (6.277%)	1,512 (9.449%)
Criminal Trespass (PL ART 140)	1,056 (7.218%)	75 (5.474%)	1,131 (7.068%)
Arson (PL ART 150)	49 (0.335%)	5 (0.365%)	54 (0.337%)
Grand Larceny - Auto (PL ART 155)	470 (3.212%)	31 (2.263%)	501 (3.131%)
Grand Larceny (PL ART 155)	1,815 (12.405%)	171 (12.482%)	1,986 (12.412%)
Petit Larceny (PL ART 155)	936 (6.397%)	121 (8.832%)	1,057 (6.606%)
Criminal Possession of Stolen Property (PL ART 165)	2,541 (17.367%)	257 (18.759%)	2,798 (17.486%)
Other Theft (PL ART 165)	371 (2.536%)	42 (3.066%)	413 (2.581%)
Criminal Mischief (PL ART 145)	1,324 (9.049%)	72 (5.255%)	1,396 (8.724%)
Gambling (PL ART 225)	1 (0.007%)	... (0.000%)	1 (0.006%)
Prostitution (PL ART 230)	3 (0.021%)	4 (0.292%)	7 (0.044%)
Other Crimes	914 (6.247%)	101 (7.372%)	1,013 (6.343%)
Total of Other than Designated Felony Allegations	14,631 (100.000%)	1,370 (100.000%)	16,001 (100.000%)

Upstate Counties			
Delinquency Petition Allegations	Boys	Girls	Both
Homicide (PL ART 125)	7 (0.070%)	1 (0.067%)	8 (0.069%)
Kidnapping (PL ART 135)	4 (0.040%)	2 (0.135%)	6 (0.052%)
Rape (PL ART 130)	19 (0.189%)	... (0.000%)	19 (0.165%)
Other Sex Offenses (PL ART 130)	142 (1.416%)	3 (0.202%)	145 (1.259%)
Robbery (PL ART 160)	303 (3.022%)	24 (1.615%)	327 (2.840%)
Assault or Related Offenses (PL ART 120)	744 (7.419%)	231 (15.545%)	975 (8.468%)
Criminal Sale Control Substance (PL ART 220)	26 (0.259%)	6 (0.404%)	32 (0.278%)
Criminal Possession Control Substance (PL ART 220)	55 (0.548%)	11 (0.740%)	66 (0.573%)
Other Drug Offense (PL ART 220)	3 (0.030%)	4 (0.269%)	7 (0.061%)
Criminal Possession of Weapon (PL ART 265)	147 (1.466%)	8 (0.538%)	155 (1.346%)
Burglary or Related Offense (PL ART 140)	2,477 (24.701%)	144 (9.690%)	2,621 (22.764%)
Criminal Trespass (PL ART 140)	429 (4.278%)	66 (4.441%)	495 (4.299%)
Arson (PL ART 150)	119 (1.187%)	21 (1.413%)	140 (1.216%)
Grand Larceny - Auto (PL ART 155)	123 (1.227%)	1 (0.067%)	124 (1.077%)
Grand Larceny (PL ART 155)	754 (7.519%)	95 (6.393%)	849 (7.374%)
Petit Larceny (PL ART 155)	1,822 (18.169%)	468 (31.494%)	2,290 (19.889%)
Criminal Possession of Stolen Property (PL ART 165)	674 (6.721%)	98 (6.595%)	772 (6.705%)
Other Theft (PL ART 165)	385 (3.839%)	36 (2.423%)	421 (3.656%)
Criminal Mischief (PL ART 145)	1,065 (10.620%)	86 (5.787%)	1,151 (9.997%)
Gambling (PL ART 225)	2 (0.020%)	... (0.000%)	2 (0.017%)
Prostitution (PL ART 230)	3 (0.030%)	18 (1.211%)	21 (0.182%)
Other Crimes	725 (7.230%)	163 (10.969%)	888 (7.712%)
Total of Other than Designated Felony Allegations	10,028 (100.000%)	1,486 (100.000%)	11,514 (100.000%)

Statewide			
Delinquency Petition Allegations	Boys	Girls	Both
Homicide (PL ART 125)	18 (0.073%)	1 (0.035%)	19 (0.069%)
Kidnapping (PL ART 135)	46 (0.187%)	5 (0.175%)	51 (0.185%)
Rape (PL ART 130)	58 (0.235%)	1 (0.035%)	59 (0.214%)
Other Sex Offenses (PL ART 130)	265 (1.075%)	8 (0.280%)	273 (0.992%)
Robbery (PL ART 160)	1,920 (7.786%)	140 (4.902%)	2,060 (7.487%)
Assault or Related Offense (PL ART 120)	1,742 (7.064%)	411 (14.391%)	2,153 (7.825%)
Criminal Sale Control Substance (PL ART 220)	80 (0.324%)	8 (0.280%)	88 (0.320%)
Criminal Possession Control Substance (PL ART 220)	159 (0.645%)	15 (0.525%)	174 (0.632%)
Other Drug Offense (PL ART 220)	19 (0.077%)	5 (0.175%)	24 (0.087%)
Criminal Possession of Weapon (PL ART 265)	868 (3.520%)	101 (3.536%)	969 (3.522%)
Burglary or Related Offense (PL ART 140)	3,903 (15.828%)	230 (8.053%)	4,133 (15.021%)
Criminal Trespass (PL ART 140)	1,485 (6.022%)	141 (4.937%)	1,626 (5.910%)
Arson (PL ART 150)	168 (0.681%)	26 (0.910%)	194 (0.705%)
Grand Larceny - Auto (PL ART 155)	593 (2.405%)	32 (1.120%)	625 (2.271%)
Grand Larceny (PL ART 155)	2,569 (10.418%)	266 (9.314%)	2,835 (10.303%)
Petit Larceny (PL ART 155)	2,758 (11.185%)	589 (20.623%)	3,347 (12.164%)
Criminal Possession of Stolen Property (PL ART 165)	3,215 (13.038%)	355 (12.430%)	3,570 (12.975%)
Other Theft (PL ART 165)	756 (3.066%)	78 (2.731%)	834 (3.031%)
Criminal Mischief (PL ART 145)	2,389 (9.688%)	158 (5.532%)	2,547 (9.257%)
Gambling (PL ART 225)	3 (0.012%)	... (0.000%)	3 (0.011%)
Prostitution (PL ART 230)	6 (0.024%)	22 (0.770%)	28 (0.102%)
Other Crimes	1,639 (6.647%)	264 (9.244%)	1,903 (6.916%)
Total of Other than Designated Felony Allegations	24,659 (100.000%)	2,856 (100.000%)	27,515 (100.000%)

Table A-39
FAMILY COURT
Original Petitions Initially Disposed
Detention by Region and County
Detention of Children in all Delinquency Proceedings Including Designated Felonies (Boys Only)
January 1, 1982 through December 31, 1982

Region County	Total*	Not Detained	Detained		Length of Detention After Petition									
			Before Petition	After Petition	1-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-729 Days	Over 730 Days	
Total New York State	14,240	11,377	188	2,814	743	397	252	310	864	213	33	2	...	
Total New York City	6,040	4,529	99	1,477	465	186	112	130	404	150	29	1	...	
New York	1,097	665	83	405	111	39	17	45	136	51	6	...	...	
Kings	2,457	1,832	10	622	209	77	46	47	155	77	11	...	...	
Queens	1,441	1,212	5	226	72	34	24	19	57	14	6	...	...	
Bronx	949	745	...	204	64	33	25	19	48	8	6	...	...	
Richmond	96	75	1	20	9	3	...	...	8	...	...	...	...	
Total Upstate	8,200	6,848	89	1,337	278	211	140	180	460	63	4	1	...	
Albany	450	360	...	90	7	16	20	27	18	2	...	...	...	
Allegany	12	10	...	2	...	1	...	...	...	1	...	...	...	
Broome	206	198	1	8	1	...	2	...	4	1	...	...	...	
Cattaraugus	73	72	...	1	1	...	...	...	...	...	...	...	...	
Cayuga	13	13	...	...	...	...	...	...	...	...	...	...	...	
Chautauqua	141	133	...	8	4	...	4	...	...	...	...	...	...	
Chemung	119	87	2	31	...	3	2	2	23	1	...	...	...	
Chenango	40	38	...	2	...	...	2	...	...	...	...	...	...	
Clinton	36	32	1	3	...	...	...	3	...	...	...	...	...	
Columbia	82	74	3	7	2	2	...	1	2	...	...	...	...	
Cortland	24	20	2	4	...	1	...	...	3	...	...	...	...	
Delaware	12	12	...	...	...	...	...	...	...	...	...	...	...	
Dutchess	244	195	...	49	14	13	5	9	8	...	...	...	...	
Erie	964	815	1	149	18	15	9	18	63	26	...	...	...	
Essex	22	18	...	4	1	3	...	...	...	...	...	...	...	
Franklin	43	41	...	2	...	...	2	...	...	...	...	...	...	
Fulton	46	41	2	5	2	2	1	...	...	...	...	...	...	
Genesee	71	69	1	2	2	...	...	...	...	...	...	...	...	
Greene	13	13	...	...	...	...	...	...	...	...	...	...	...	
Hamilton	5	3	2	2	2	...	...	...	...	...	...	...	...	
Herkimer	27	27	...	...	...	...	...	...	...	...	...	...	...	
Jefferson	134	122	7	12	7	...	5	...	...	...	...	...	...	
Lewis	...	...	...	...	...	...	...	...	...	...	...	...	...	
Livingston	51	47	1	4	1	...	...	...	3	...	...	...	...	
Madison	56	43	...	13	6	4	...	2	1	...	...	...	...	
Monroe	634	406	...	228	39	29	29	13	110	6	2	...	...	
Montgomery	16	15	...	1	...	...	...	...	...	...	...	...	...	
Nassau	967	812	...	155	54	49	13	22	17	...	...	...	...	
Niagara	95	73	1	22	8	...	2	3	8	1	...	...	...	
Oneida	14	14	...	...	...	...	...	...	...	...	...	...	...	
Onondaga	444	314	24	130	16	19	8	21	54	12	...	...	...	
Ontario	33	29	...	4	2	...	...	2	...	...	...	...	...	
Orange	206	167	3	37	4	1	2	14	16	...	...	...	...	
Orleans	26	26	...	...	...	...	...	...	...	...	...	...	...	
Oswego	36	33	...	3	1	2	...	...	...	...	...	...	...	
Otsego	14	13	...	1	1	...	...	...	...	...	...	...	...	
Putnam	87	72	1	14	...	9	...	2	...	3	...	...	...	
Rensselaer	131	112	11	15	1	2	2	6	3	1	...	...	...	
Rockland	89	77	1	12	...	...	2	4	6	...	...	...	...	
St. Lawrence	47	43	...	4	2	...	...	1	1	...	...	...	...	
Saratoga	173	151	...	22	5	9	2	2	4	1	...	...	...	
Schenectady	97	93	1	4	1	1	...	1	1	...	...	...	...	
Schoharie	2	1	...	1	...	...	...	...	...	...	...	...	...	
Schuyler	9	5	2	3	...	...	...	...	3	...	...	...	...	
Seneca	18	17	1	1	...	...	...	...	1	...	...	...	...	
Steuben	78	70	...	8	6	1	...	...	1	...	...	...	...	
Suffok	1,110	940	2	170	44	19	20	17	67	3	...	...	...	
Sullivan	83	80	1	3	2	...	1	...	...	...	...	...	...	
Tioga	13	12	...	1	...	1	...	...	...	...	...	...	...	
Tompkins	22	18	...	4	...	1	...	...	...	...	...	...	...	
Ulster	178	175	...	3	...	1	...	3	...	...	...	...	...	
Warren	24	20	...	4	1	...	1	2	...	...	...	...	...	
Washington	45	43	1	2	...	...	1	...	2	...	...	...	...	
Wayne	113	97	2	15	6	2	1	1	5	...	...	...	...	
Westchester	462	390	15	69	14	5	4	6	32	5	2	1	...	
Wyoming	43	40	...	3	2	1	...	...	...	...	...	...	...	
Yates	7	7	...	...	...	...	...	...	...	...	...	...	...	

*Figures in Columns 2, 3, and 4 exceed total because some proceedings are included in both columns 3 and 4.
There were 139 such proceedings statewide.

Table A-40
FAMILY COURT
Original Petitions Initially Disposed
Detention by Region and County
Detention of Children in all Delinquency Proceedings Including Designated Felonies (Girls Only)
January 1, 1982 through December 31, 1982

Region County	Total*	Not Detained	Detained		Length of Detention After Petition								
			Before Petition	After Petition	1-7 Days	8-14 Days	15-21 Days	22-30 Days	31-90 Days	91-180 Days	181-365 Days	366-729 Days	Over 730 Days
Total New York State	1,970	1,606	32	351	83	55	38	39	118	16	2	...	...
Total New York City	619	492	11	120	32	13	10	14	40	9	2	...	...
New York	123	76	11	40	12	2	4	5	14	3	...	...	...
Kings	252	203	...	49	9	9	3	5	18	3	2	...	...
Queens	181	161	...	20	9	1	2	3	3	2	...	...	...
Bronx	42	33	...	9	1	1	1	1	4	1	...	...	...
Richmond	21	19	...	2	1	...	...	...	1	...	...	...	...
Total Upstate	1,351	1,114	21	231	51	42	28	25	78	7	...	...	...
Albany	86	62	...	24	1	8	2	4	7	2	...	...	...
Allegany	1	1	...	...	...	...	...	...	...	...	...	...	...
Broome	26	24	...	2	...	...	...	1	1	...	...	...	...
Cattaraugus	13	12	...	1	...	...	...	1	...	...	...	...	...
Cayuga	7	7	...	...	...	...	...	...	...	...	...	...	...
Chautauqua	14	14	...	...	...	...	...	...	...	...	...	...	...
Chemung	20	18	...	2	...	...	...	...	2	...	...	...	...
Chenango	4	4	...	...	...	...	...	...	...	...	...	...	...
Clinton	3	2	...	1	...	...	...	...	...	...	...	...	...
Columbia	8	6	2	1	...	...	1	...	...	...	...	...	...
Cortland	4	3	1	1	...	...	...	...	1	...	...	...	...
Delaware	5	5	...	...	...	...	...	...	...	...	...	...	...
Dutchess	31	29	...	2	1	...	1	...	...	...	...	...	...
Erie	194	175	...	19	4	1	1	3	8	2	...	...	...
Essex	9	6	...	3	1	...	...	...	2	...	...	...	...
Franklin	...	...	...	...	...	...	...	...	...	...	...	...	...
Fulton	9	7	...	2	1	...	1	...	...	...	...	...	...
Genesee	3	2	...	1	...	...	1	...	...	...	...	...	...
Greene	3	3	...	...	...	...	...	...	...	...	...	...	...
Hamilton	1	1	...	...	...	...	...	...	...	...	...	...	...
Herkimer	3	3	...	...	...	...	...	...	...	...	...	...	...
Jefferson	7	7	...	...	...	...	...	...	...	...	...	...	...
Lewis	...	...	...	...	...	...	...	...	...	...	...	...	...
Livingston	12	11	1	1	...	...	1	...	...	...	...	...	...
Madison	6	6	...	...	...	...	...	...	...	...	...	...	...
Monroe	139	93	...	46	7	3	6	4	26	...	...	...	...
Montgomery	4	4	...	...	...	...	...	...	...	...	...	...	...
Nassau	151	117	1	33	16	6	2	4	5	...	...	...	...
Niagara	18	15	2	3	2	...	...	1	...	...	...	...	...
Oneida	2	2	...	...	...	...	...	...	...	...	...	...	...
Onondaga	79	52	5	27	4	7	...	2	12	2	...	...	...
Ontario	5	2	1	3	1	...	1	...	1	...	...	...	...
Orange	34	32	...	2	...	2	...	...	...	...	...	...	...
Orleans	1	1	...	...	...	...	...	...	...	...	...	...	...
Oswego	...	7	...	...	...	...	...	...	...	...	...	...	...
Otsego	4	4	...	...	...	...	...	...	...	...	...	...	...
Putnam	3	2	...	1	...	...	...	1	...	...	...	...	...
Rensselaer	23	19	...	4	...	2	1	...	1	...	...	...	...
Rockland	9	8	...	1	...	...	...	...	...	...	...	...	...
St. Lawrence	7	6	...	1	...	...	1	...	...	...	...	...	...
Saratoga	30	27	...	3	1	2	...	...	...	...	...	...	...
Schenectady	26	25	...	1	1	...	...	...	...	...	...	...	...
Schoharie	1	1	...	...	...	...	...	...	...	...	...	...	...
Schuyler	1	1	...	...	...	...	...	...	...	...	...	...	...
Seneca	3	1	...	1	...	...	...	...	1	...	...	...	...
Steuben	13	11	1	1	...	...	...	1	...	...	...	...	...
Suffolk	164	132	3	32	9	5	5	3	9	1	...	...	...
Sullivan	12	12	...	...	...	1	...	...	...	...	...	...	...
Tioga	6	5	...	1	...	1	...	...	...	...	...	...	...
Tompkins	2	1	...	1	...	...	...	...	1	...	...	...	...
Ulster	29	28	1	...	...	...	...	...	...	...	...	...	...
Warren	4	4	...	...	...	...	...	...	...	...	...	...	...
Washington	8	8	...	...	...	...	...	...	...	...	...	...	...
Wayne	18	16	...	2	...	...	2	...	...	...	...	...	...
Westchester	74	65	2	8	2	5	1	...	...	...	...	...	...
Wyoming	5	5	...	...	...	...	...	...	...	...	...	...	...
Yates	...	...	...	...	...	...	...	...	...	...	...	...	...

*Figures in columns 2, 3, and 4 exceed total because some proceedings are included in both columns 3 and 4.
There were 19 such proceedings statewide.

Table A-41 (partial)
FAMILY COURT
Original Petitions Initially Disposed
Juvenile Delinquent (Including Designated Felony) Proceedings (Boys Only)
Nature of Dispositions by Region and County
January 1, 1982 through December 31, 1982

Region County	No Adjudication										Adjudication												
	Total Dis- posi- tions	Dis- missed for Failure at Fact- finding Hearing	Other Dis- mis- sion at Fac- tival Hear- ing	Dis- missed at Dis- posi- tional Hear- ing	Dis- missed for Failure to Pro- secute	Dis- missed with- out Pro- secu- tion	Dis- missed in Ju- venile Court (ACD)	Dis- missed in Dis- posi- tional Court	Trans- ferred to Another County	Dis- charged to Mental Hygiene Insti- tution	Dis- charged to Mental Hy- giene Insti- tution	Dis- charged with Warn- ing	Judg- ment sug- gest- ed	Pro- tec- tion with- out Place- ment	Placement								
															Owa Home Rela- tive	Sub- stan- tial Pri- vate Per- son	Com- muni- ties Ser- vices	Dis- posi- tion For Youth Title 2	Dis- posi- tion For Youth Title 3 (DFY) STS	Re- spon- sible Place- ment 3 yrs. or less	Re- spon- sible Place- ment (DFY) 3 yrs. or less		
Total New York State	14,240	325	...	164	584	452	3,522	958	1,609	314	359	...	...	10	537	2,880	21	626	585	1,016	1	17	60
Total New York City	6,040	154	...	35	369	177	1,201	473	1,275	136	9	...	...	5	81	915	3	59	432	533	...	13	50
New York	1,097	71	...	4	74	45	56	56	206	82	1	...	...	...	18	135	...	2	172	155	...	5	15
Kings	2,457	26	...	4	107	85	649	178	699	6	...	...	...	...	33	417	...	3	42	70	...	1	34
Queens	1,441	44	...	10	132	19	470	81	228	33	5	...	...	...	13	205	...	6	6	105	...	5	1
Bronx	949	10	...	13	67	25	81	148	226	13	3	...	...	...	14	153	...	...	6	84	...	2	...
Richmond	86	3	...	4	9	3	45	10	6	2	...	...	...	...	3	5	...	3	1	2	...	...	...
Total Upstate	8,200	171	...	129	195	275	2,221	485	534	178	350	...	...	5	456	1,965	18	567	153	483	1	4	10
Albany	450	13	...	7	5	1	148	23	14	...	1	...	...	...	91	3	1	29	6	55	...	...	...
Allegany	12	1	...	...	...	...	...	...	...	...	...	...	...	...	1	3	...	...	...	...	...	...	...
Brockport	206	15	...	...	...	...	...	...	...	...	...	...	...	...	7	62	...	33	3	17	...	...	...
Cattaraugus	73	...	...	...	...	...	...	...	...	...	...	...	...	...	20	...	...	6	2	6	...	...	...
Cayuga	13	...	...	...	...	...	...	...	...	...	...	...	...	...	2	...	...	2	4	...	...	...	...
Chemung	141	...	...	...	...	...	...	...	...	...	...	...	...	...	7	49	...	11	2	4	...	...	...
Chemango	40	...	...	...	...	...	...	...	...	...	...	...	...	...	44	...	31	1	10	...	...	...	1
Columbia	36	...	...	...	...	...	...	...	...	...	...	...	...	...	24	...	1	9	...	...	...	...	...
Cortland	82	...	...	...	...	...	...	...	...	...	...	...	...	...	15	...	2	2	4	...	...	...	...
Delaware	24	...	...	...	...	...	...	...	...	...	...	...	...	...	12	...	...	...	...	...	...	...	...
Dutchess	12	...	...	...	...	...	...	...	...	...	...	...	...	...	2	...	2	...	...	...	...	...	...
Essex	244	2	...	...	...	...	...	...	...	...	...	...	...	...	6	...	2	...	...	...	...	...	...
Fulton	964	32	...	...	...	...	...	...	...	...	...	...	...	...	4	...	...	32	2	4	...	...	...
Franklin	22	...	...	...	...	...	...	...	...	...	...	...	...	...	10	...	...	33	11	47	...	1	...
Greene	43	...	...	...	...	...	...	...	...	...	...	...	...	...	3	...	...	4	...	6	...	...	...
Hamilton	71	2	...	...	...	...	...	...	...	...	...	...	...	...	7	...	...	1	3	11	...	...	...
Herkimer	13	3	...	...	...	...	...	...	...	...	...	...	...	...	2	...	...	4	...	3	...	...	...
Jefferson	27	2	...	...	...	...	...	...	...	...	...	...	...	...	7	...	...	...	...	...	...	...	...
Total	134	4	...	1	2	5	9	2	10	...	23	...	...	...	3	...	...	7	1	16	...	...	...

Table A-41 (concluded)
FAMILY COURT
Original Petitions Initially Disposed
Juvenile Delinquent (Including Designated Felony) Proceedings (Boys Only)
Nature of Dispositions by Region and County
January 1, 1982 through December 31, 1982

Region County	No Adjudication										Adjudication													
	Dis- missed for Failure of Proof at Fact- Finding Hearing	Other Dis- missal at Fact- Find- ing Hear- ing	Dis- missed at Dis- posi- tional Hear- ing	Dis- missed for Failure to Prose- cute	Dis- missed with- out Prej- udice	Dis- missed in fur- ther dis- posi- tion (ACD)	Other Dis- missal	With- drawn	Trans- ferred to Another County	Dis- charged to Mental Hygiene Insti- tution	Dis- charged to Mental Hygiene Insti- tution	Dis- charged with War- ing	Judg- ment Sug- gested	Pro- tection with- out Place- ment	Own Home Rela- tive	Com- muni- ty Ser- vice Per- son	Dis- posi- tion For Year 1 Title 2	Dis- posi- tion For Year 2 Title 2	Dis- posi- tion For Year 3 Title 3 (NTS)	Re- stric- tive Place- ment (DFY) 5 yrs.	Re- stric- tive Place- ment (DFY) 3 yrs.	Other Place- ment		
Lewis	51	...	...	1	...	6	3	9	2	...	...	...	5	26	...	...	3	5	...	...	...	...	...	...
Livingston	56	...	...	...	...	13	49	22	1	...	...	...	83	125	...	...	6	47	...	...	...	...	...	
Madison	634	4	1	3	8	193	2	49	...	...	...	...	2	2	...	...	29	...	...	...	...	...	...	
Montgomery	16	1	...	...	1	8	2	2	...	...	...	...	...	...	...	...	53	...	...	...	...	...	...	
Nassau	987	11	1	11	7	133	10	9	102	177	...	...	113	311	...	...	...	...	...	...	...	...	...	
Niagara	95	8	1	2	...	9	6	3	...	...	...	...	2	32	...	...	5	...	...	...	...	...	...	
Oneida	14	...	...	...	...	...	...	1	...	...	...	...	...	...	...	...	6	...	...	...	...	...	...	
Onondaga	444	1	...	...	15	283	29	1	3	...	...	...	11	45	...	...	29	...	...	...	...	...	...	
Ontario	33	...	...	...	2	5	1	10	7	...	...	...	4	20	...	...	20	...	...	...	...	...	...	
Orange	206	5	...	6	1	35	2	1	...	...	...	...	...	...	...	...	11	...	...	...	...	...	...	
Orleans	26	...	2	1	...	1	1	1	...	...	...	...	...	...	...	...	1	...	...	...	...	...	...	
Oswego	36	1	...	...	...	1	1	1	1	...	...	...	10	19	...	...	3	...	...	...	...	...	...	
Otsego	14	...	...	...	...	1	1	1	...	...	...	...	1	8	...	...	1	...	...	...	...	...	...	
Putnam	87	1	...	...	...	42	3	5	2	...	...	...	12	22	...	...	1	...	...	...	...	...	...	
Rensselaer	131	13	...	5	3	20	11	8	...	...	...	...	...	30	...	...	3	...	...	...	...	...	...	
Rockland	89	...	1	1	1	36	1	8	...	...	...	...	...	...	...	...	8	...	...	...	...	...	...	
St. Lawrence	47	6	1	1	1	4	4	...	2	4	...	...	1	14	...	...	3	...	...	...	...	...	...	
Saratoga	173	2	1	2	9	95	13	1	...	...	...	...	...	19	...	...	23	...	...	...	...	...	...	
Schenectady	97	2	...	1	1	5	1	11	1	8	...	...	1	45	...	...	5	...	...	...	...	...	...	
Schoharie	2	...	...	...	...	1	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
Schuyler	9	...	...	...	...	1	4	...	2	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
Seneca	18	...	...	...	...	4	9	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
St. Lawrence	78	2	...	...	...	1	1	...	...	...	...	...	...	...	...	...	2	...	...	...	...	...	...	
Stauben	2	...	...	...	...	13	24	6	2	1	...	...	...	...	...	...	2	...	...	...	...	...	...	
Suffolk	1,110	12	46	45	36	234	27	237	6	13	...	...	39	261	...	...	91	...	...	...	...	...	...	
Sullivan	83	1	2	...	9	16	2	7	...	...	...	...	3	21	...	...	6	...	...	...	...	...	...	
Toga	13	...	...	...	...	...	...	...	1	...	...	...	...	4	...	...	3	...	...	...	...	...	...	
Tompkins	22	3	...	1	...	6	31	9	10	...	...	...	3	40	...	...	2	...	...	...	...	...	...	
Ulster	178	4	...	1	5	52	3	1	...	...	...	...	...	...	...	...	10	...	...	...	...	...	...	
Warren	24	...	...	1	...	3	3	...	...	...	...	...	...	...	...	...	7	...	...	...	...	...	...	
Washington	45	...	...	1	2	13	39	5	...	...	...	...	2	15	...	...	3	...	...	...	...	...	...	
Wayne	113	3	...	2	10	25	6	...	2	...	...	...	2	13	...	...	9	...	...	...	...	...	...	
Westchester	462	9	5	9	10	145	25	74	16	51	...	...	12	63	...	...	23	...	...	...	...	...	...	
Wyoming	43	1	4	...	...	8	1	1	...	...	...	...	...	...	...	...	7	...	...	...	...	...	...	
Yates	7	...	...	...	...	...	...	...	...	...	...	...	1	6	...	...	...	...	...	...	...	...	...	

Table A-42(partial)
FAMILY COURT
Original Petitions Initially Disposed
Juvenile Delinquent (Including Designated Felony) Proceedings (Girls Only)
Nature of Dispositions by Region and County
January 1, 1982 through December 31, 1982

Region County	Total Dis- posi- tions	No Adjudication										Adjudication										Placement			
		Dis- missed for Failure of Pro- secu- tion Hear- ing	Other Dis- missed at Fact- find- ing Hear- ing	Dis- missed at Dis- posi- tional Hear- ing	Dis- missed for Failure to Pro- secu- te	Dis- missed with- out Pre- sen- tation	Dis- missed in Fur- ther- ance of Justi- ce (ACD)	Other Dis- mis- sion	With- drawn	Trans- ferred to An- other Com- muni- ty	Dis- charged to An- other Peti- tion	Dis- charged to Men- tal Hy- giene Insti- tution	Dis- charged with War- ning	Judg- ment Sug- gested	Pro- tec- tion with- out Place- ment	Own Home Rele- ative	Comm. Social Ser- vices	Divi- sion For Youth Title 2	Divi- sion For Youth Title 3 (NY- STS)	Re- stric- tive Place- ment (DFY) 5 yrs.	Re- stric- tive Place- ment (DFY) 3 yrs.	Other Place- ment			
Total New York State	1,970	53	...	16	65	67	655	159	219	66	37	...	5	74	308	1	107	43	91	...	1	3	...		
Total New York City	619	21	...	7	30	18	200	54	136	18	1	...	...	4	58	...	9	21	41	...	...	1	...		
New York	123	7	...	...	9	7	15	13	24	14	...	...	...	2	7	...	3	8	14	...	...	1	...		
Kings	252	2	...	...	5	7	93	21	65	...	1	...	...	2	27	...	1	7	19	...	...	...	...		
Queens	181	11	...	5	13	3	74	13	32	2	...	...	...	1	19	...	3	4	1	...	...	...	...		
Bronx	42	1	...	...	3	1	2	7	14	1	...	...	...	...	3	...	2	2	6	...	...	...	...		
Richmond	21	...	...	...	...	...	16	...	1	1	...	...	...	...	2	...	...	...	1	...	...	...	...		
Total Upstate	1,351	32	...	9	35	49	455	105	83	48	36	...	5	70	250	1	98	22	50	...	1	2	...		
Albany	86	4	...	...	1	...	28	9	5	1	...	...	...	13	13	...	8	...	4	...	...	...	...		
Allegany	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...		
Broome	26	3	...	...	1	2	4	1	...	...	...	...	...	...	9	...	4	1	3	...	...	...	...		
Cattaraugus	13	...	...	...	...	...	...	...	...	...	...	...	...	...	3	...	...	...	...	...	...	...	...		
Cayuga	7	3	...	...	...	...	...	...	...	1	...	...	...	1	...	...	...	2	...	...	...	...	...		
Chautauqua	14	1	...	...	...	2	3	...	...	1	1	...	...	1	...	...	...	...	...	...	...	...	...		
Chemung	20	...	...	...	1	2	2	...	...	...	...	...	...	...	8	...	6	...	2	...	...	...	...		
Chenango	4	...	...	...	...	...	1	...	...	...	...	...	...	...	3	...	...	...	...	...	...	...	...		
Clinton	3	...	...	...	...	...	...	...	...	...	...	...	...	...	2	...	1	...	...	...	...	...	...		
Columbia	8	...	...	...	...	...	6	...	1	3	...	...	...	...	3	...	...	...	...	...	...	...	...		
Corland	4	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...		
Delaware	4	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...		
Dutchess	31	1	...	...	...	1	8	...	2	...	5	...	...	4	1	...	4	3	7	...	1	...	...		
Essex	194	5	...	12	14	2	103	19	4	...	...	...	...	2	23	...	3	2	...	...	...	...	...		
Fulton	9	...	...	...	...	...	4	...	...	...	...	...	...	...	...	...	...	...	2	...	...	...	...		
Franklin	...	...	...	1	...	...	4	...	...	...	...	...	...	...	...	...	1	...	...	...	...	...	...		
Genesee	3	...	...	...	...	...	2	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...		
Greene	3	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...		
Hamilton	3	...	...	...	...	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...		
Herkimer	1	...	...	...	...	...	...	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...		
Jefferson	7	...	...	...	...	...	...	...	...	...	...	...	...	2	3	...	...	...	2	...	...	...	...		

Table A-42(concluded)
FAMILY COURT
Original Petitions Initially Disposed
Juvenile Delinquent (Including Designated Felony) Proceedings (Girls Only)
Nature of Dispositions by Region and County
January 1, 1982 through December 31, 1982

Region County	No Adjudication										Adjudication							Placement				
	Total Dispositions	Dismissed for Failure of Proof at Fact-Finding Hearing	Other Dismissal at Fact-Finding Hearing	Dismissed at Disposition Hearing	Dismissed for Failure to Prosecute	Dismissed with Prejudice	Dismissed in Furtherance of Justice (ACD)	Other Dismissal	Withdrawn	Transferred to Another County	Dismissed to Another Institution	Dismissed to Mental Hygiene Institution	Discharged with Warning	Judgment Suspended	Protection with Placement	Own Home Relative or Suitable Private Person	Comm. of Social Services	Division For Youth Title 2	Division For Youth Title 3 (NY. DFS) STS	Re-strictive Placement (IDFY) 5 yrs.	Re-strictive Placement (IDFY) 3 yrs.	Other Placement
Lewis	12	...	...	...	...	...	4	2	...	1	...	...	...	...	3	...	1	1	...	...	...	...
Livingston	6	...	...	...	...	...	4	...	...	...	...	...	...	14	...	...	1	...	9	...	...	...
Madison	139	...	...	1	...	...	55	19	4	...	...	...	...	17	...	...	7	6	...	...	...	2
Montgomery	4	...	...	...	...	...	3	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Nassau	151	3	...	...	3	3	30	1	3	29	20	...	...	8	37	...	13	1	...	...	...	...
Niagara	18	...	...	...	...	...	3	...	2	...	...	...	1	...	...	...	2	2	1	...	...	...
Oneida	2	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Onondaga	79	...	...	...	...	2	49	6	...	1	...	...	...	6	8	...	1	1	7	...	...	...
Ontario	5	...	...	...	...	...	6	8	...	1	1	...	...	3	13	...	1	1	...	...	...	...
Orange	34	...	...	...	...	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Orleans	1	...	...	...	...	...	1	...	1	...	...	...	...	1	...	...	2	...	...	...	...	...
Oswego	7	...	...	...	...	...	1	...	...	...	...	...	...	1	3	...	1	...	...	...	...	...
Otsego	4	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Putnam	3	...	...	...	...	...	1	...	...	...	...	...	...	...	...	...	1	...	...	...	...	...
Rensselaer	23	1	...	...	...	3	7	2	3	...	1	...	...	1	...	...	1	1	...	...	...	...
Rockland	9	...	...	...	1	...	...	...	...	...	...	...	...	...	...	...	...	1	...	...	...	...
St. Lawrence	7	1	...	...	...	1	...	...	...	...	...	...	1	...	...	...	3	1	...	...	...	...
Saratoga	30	...	...	...	...	2	13	5	...	...	...	...	1	4	1	...	4	1	1	...	...	...
Schenectady	26	...	...	...	2	1	2	...	7	...	3	...	...	...	8	...	1	1	1	...	...	...
Schoharie	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Schuyler	1	...	...	...	...	...	1	...	...	...	...	...	...	...	...	...	...	1	...	...	...	...
Seneca	3	...	...	...	...	...	1	1	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Steuben	13	2	...	...	...	...	3	1	2	...	...	1	...	...	...	...	...	...	...	...	...	...
Suffolk	164	...	...	7	6	5	54	4	34	3	...	...	...	9	25	...	14	1	1	...	...	...
Sullivan	12	...	...	...	...	7	2	...	1	...	...	...	...	1	2	...	...	...	...	...	...	...
Tioga	6	1	...	...	1	...	...	...	...	...	...	...	...	...	...	...	2	...	...	...	...	...
Tompkins	2	...	...	...	...	...	...	...	...	1	...	...	...	...	5	...	2	1	...	...	...	...
Ulster	29	1	...	...	...	...	16	5	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Warren	4	...	...	...	...	...	3	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Washington	8	1	...	...	...	...	9	...	...	...	1	...	...	...	5	...	1	...	...	...	...	...
Wayne	18	...	...	...	...	...	...	2	...	...	...	...	...	5	6	...	5	...	...	...	...	...
Westchester	74	3	...	...	3	2	19	10	12	5	4	...	...	...	...	...	1	...	4	...	...	...
Wyoming	5	...	...	...	...	...	1	2	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Yates	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...

Table A-43
FAMILY COURT
Original Petitions Initially Disposed
Original Allegations* of Family Offense Proceedings by Region
January 1, 1982 to December 31, 1982

Region	Total	Assault	Attempted Assault	Reckless Endangerment	Menacing	Disorderly Conduct	Harrassment	Other
Total New York State	33,029	12,660	1,188	1,173	2,622	6,045	9,332	9
Total New York City	17,229	6,584	715	709	1,849	2,588	4,777	7
Total Upstate	15,800	6,076	473	464	773	3,457	4,555	2

*Figures represent the total number of allegations. Since many petitions contain more than one allegation, the total number of such allegations may be greater than the total number of petitions disposed.

Table A-44
FAMILY COURT
Family Offense Proceedings
Original Petitions Initially Disposed by Petitioners and Respondents
January 1, 1982 through December 31, 1982

A. New York City

Respondents	Petitioners								
	Total	Wife of Respondent	Mother of Respondent	Husband of Respondent	Father of Respondent	Daughter of Respondent	Son of Respondent	Other Member Same Family/ Household of Respondent	Other
Husband of Injured Individual	7,104	7,089	12	0	0	1	0	0	2
Father of Injured Individual	192	25	9	0	2	98	49	1	8
Wife of Injured Individual	569	0	2	560	6	1	0	0	0
Mother of Injured Individual	122	0	3	2	3	72	37	3	2
Son of Injured Individual	1,326	6	1,017	0	298	2	0	0	3
Daughter of Injured Individual	338	0	287	5	44	1	0	1	0
Other Member of Same Family or Household of Injured Individual	539	0	2	0	1	0	1	531	4
Other	245	0	0	0	1	1	1	2	240
Total	10,435	7,120	1,332	567	355	176	88	538	259

B. Upstate

Respondents	Petitioners								
	Total	Wife of Respondent	Mother of Respondent	Husband of Respondent	Father of Respondent	Daughter of Respondent	Son of Respondent	Other Member Same Family/ Household of Respondent	Other
Husband of Injured Individual	9,102	9,086	5	0	1	0	4	1	5
Father of Injured Individual	226	42	6	0	2	99	53	8	16
Wife of Injured Individual	906	0	1	898	4	1	1	0	1
Mother of Injured Individual	108	0	1	14	0	56	30	3	4
Son of Injured Individual	999	1	721	0	264	4	2	1	6
Daughter of Injured Individual	242	0	181	1	57	0	0	0	3
Other Member of Same Family or Household of Injured Individual	470	1	6	0	2	1	0	457	3
Other	149	1	3	0	0	1	0	2	142
Total	12,202	9,131	924	913	330	162	90	472	180

C. Statewide

Respondents	Petitioners								
	Total	Wife of Respondent	Mother of Respondent	Husband of Respondent	Father of Respondent	Daughter of Respondent	Son of Respondent	Other Member Same Family/ Household of Respondent	Other
Husband of Injured Individual	16,206	16,175	17	0	1	1	4	1	7
Father of Injured Individual	418	67	15	0	4	197	102	9	24
Wife of Injured Individual	1,475	0	3	1,458	10	2	1	0	1
Mother of Injured Individual	230	0	4	16	3	128	67	6	6
Son of Injured Individual	2,325	7	1,738	0	562	6	2	1	9
Daughter of Injured Individual	580	0	468	6	101	1	0	1	3
Other Member of Same Family or Household of Injured Individual	1,009	1	8	0	3	1	1	988	7
Other	394	1	3	0	1	2	1	4	382
Total	22,637	16,251	2,256	1,480	685	338	178	1,010	439

Table A-45
FAMILY COURT
Dispositions of Family Offense Proceedings by County
All Petitions
January 1, 1982 through December 31, 1982

Region County	Total	Dis- missed Failure of Proof	Dis- missed Failure to Pro- secute	Other Dis- missal	With- drawn	Transfer to Another County	Consoli- dated With Another Petition	Judg- ment Sus- pended	Proba- tion	Order of Pro- tec- tion	Pro- bation and Or- der of Pro- tection	Other
Total New York State	22,647	356	5,069	4,679	3,948	13	74	11	22	8,236	26	193
Total New York City	10,437	202	2,801	3,909	802	7	31	4	8	2,592	12	65
New York	1,584	17	721	155	192	2	2	1	1	483	1	9
Kings	3,535	18	183	2,403	223	1	0	2	0	688	0	13
Queens	3,194	156	1,431	454	265	2	28	1	4	828	7	16
Bronx	1,515	9	129	864	83	0	1	0	1	402	2	24
Richmond	609	2	337	33	39	2	0	0	2	191	2	1
Total Upstate	12,210	154	2,268	770	3,146	6	43	7	14	5,644	14	128
Albany	315	2	60	0	79	0	1	0	0	168	0	5
Allegany	35	1	0	2	4	0	0	0	0	27	0	0
Broome	363	25	84	15	6	0	1	0	0	222	0	10
Cattaraugus	5	0	0	0	6	0	0	0	0	2	0	0
Cayuga	20	2	2	0	6	0	0	0	0	10	0	0
Chautauqua	75	0	23	7	7	0	0	0	0	37	1	0
Chemung	55	1	3	4	9	0	0	0	0	33	0	5
Chenango	70	4	7	2	26	0	0	0	0	30	0	0
Clinton	42	0	1	0	23	0	0	1	0	17	0	0
Columbia	68	3	5	1	25	1	0	0	0	27	0	0
Cortland	102	1	10	0	46	1	0	0	0	44	0	0
Delaware	68	1	4	5	15	0	0	1	1	39	1	1
Dutchess	390	4	53	27	116	0	0	0	0	188	1	1
Erie	882	3	234	59	88	1	0	0	0	492	0	5
Essex	22	1	0	1	7	0	0	0	0	11	0	0
Franklin	73	0	2	12	25	1	0	0	0	32	1	0
Fulton	130	0	9	2	45	0	0	0	0	74	0	0
Genesee	54	0	0	1	9	0	0	0	0	44	0	0
Greene	93	1	16	5	20	0	1	0	0	50	0	0
Hamilton	7	0	0	0	0	0	0	0	0	6	0	0
Herkimer	165	0	17	5	52	0	0	0	0	91	0	1
Jefferson	24	2	10	13	71	0	1	0	0	145	1	0
Lewis	12	0	1	2	4	0	0	0	0	4	1	0
Livingston	0	0	0	0	0	0	0	0	0	0	0	0
Madison	47	0	3	2	16	0	1	0	0	25	0	0
Monroe	400	0	21	88	59	0	0	0	0	231	1	0
Montgomery	66	1	0	6	20	0	0	0	1	35	0	3
Nassau	2,446	25	469	83	865	0	2	0	2	949	0	51
Niagara	173	1	11	9	43	0	3	0	0	101	1	4
Oneida	10	1	1	2	3	0	0	0	0	3	0	0
Onondaga	616	3	112	117	67	1	0	2	0	314	0	0
Ontario	116	2	10	4	30	0	0	0	0	69	0	1
Orange	122	5	15	10	43	0	0	0	0	46	0	3
Orleans	17	0	2	4	9	0	0	0	0	1	0	1
Oswego	49	0	3	2	24	0	0	0	0	20	0	0
Otsego	0	0	0	0	0	0	0	0	0	0	0	0
Putnam	97	0	5	4	42	0	0	0	0	42	0	0
Rensselaer	163	0	15	7	34	0	15	0	1	85	1	5
Rockland	149	2	13	15	45	0	0	0	0	74	0	0
St. Lawrence	102	4	4	3	11	0	1	0	0	78	1	0
Saratoga	105	2	19	6	28	0	0	0	0	49	0	1
Schenectady	134	1	16	1	36	0	0	0	0	75	0	3
Schoharie	30	1	1	2	9	0	0	1	0	16	0	0
Schuyler	25	0	12	2	3	0	0	0	0	8	0	0
Seneca	26	0	9	0	2	0	1	0	0	14	0	0
Steuben	47	1	3	8	14	0	0	0	0	21	0	0
Suffolk	1,869	35	562	69	471	1	1	2	1	715	1	11
Sullivan	73	1	5	14	10	0	0	0	0	40	0	1
Tioga	42	0	2	2	12	0	0	0	0	26	0	0
Tompkins	55	1	10	2	15	0	0	0	0	26	0	1
Ulster	111	4	10	6	62	0	0	0	0	23	0	6
Warren	29	0	2	2	6	0	0	0	0	19	0	0
Washington	23	1	0	0	8	0	0	0	0	13	0	1
Wayne	72	0	4	2	21	0	0	0	0	44	0	1
Westchester	1,676	12	308	135	444	0	15	0	3	669	3	1
Wyoming	29	0	0	0	9	0	0	0	0	20	0	1
Yates	0	0	0	0	0	0	0	0	0	0	0	0